

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 ----- X
4 UNITED STATES OF AMERICA, : CR 08-076

5 :
6 -against- :
7 : United States Courthouse
8 JOSEPH AGATE, et al., : Brooklyn, New York
9 Defendants. : February 26, 2009
10 : 2:00 p.m.
11 ----- X

12 TRANSCRIPT OF HEARING
13 BEFORE THE HONORABLE JACK B. WEINSTEIN
14 UNITED STATES SENIOR JUDGE

15 APPEARANCES:

16 For the Government: BENTON J. CAMPBELL
17 United States Attorney
18 BY: DANIEL BROWNELL
19 Assistant United States Attorney
20 271 Cadman Plaza East
21 Brooklyn, New York

22 For the Defendants: JAMES R. FROCCARO, ESQ.
23 Attorney for R. Epifania,
24 A. Ruggiero

25 MARK AGNIFILO, ESQ.
26 Attorney for M. King

27 GERALD SHARGEL, ESQ.
28 Attorney for A. Scibelli

29 ELLEN RESNICK, ESQ.
30 Attorney for L. Filippelli

1 SETH GINSBERG, ESQ.
2 Attorney for W. Scotto

3 JOSEPH R. BENFANTE, ESQ.
4 Attorney for J. Scopo

5 SARITA KEDIA, ESQ.
6 Attorney for J. Corozzo
7 and M. Cassarino

8 SUSAN G. KELLMAN, ESQ.
9 Attorney for L. DiMaria

10 ELIZABETH E. MACEDONIO, ESQ.
11 Attorney for J. D'Amico

12 BETTINA SCHEIN, ESQ.
13 Attorney for T. Polakoff

14 MARGARET M. SHALLEY, ESQ.
15 Attorney for V. Pacelli

16 HARLAN PROTACS, ESQ.
17 Attorney for F. Cali

18 JEREMY ORDEN, ESQ.
19 Attorney for E. Grillo

20 MARK WASSERMAN, ESQ.
21 Attorney for V. Gotti

22 HENRY MAZUREK, ESQ.
23 Attorney for V. Dragonetti

24 JOSEPH DiBENEDETTO, ESQ.
25 Attorney for Scopo

ERIC FRANZ, ESQ.
Attorney for A. Sclafani

1 MARK DeMARCO, ESQ.
2 Attorney for R. Gotti

3 MICHAEL GILBERT, ESQ.
4 Attorney for Local 282

5 DIAMUID WHITE, ESQ.
6 Attorney for N Corozzo

7 RON RUBENSTEIN, ESQ.
8 Attorney for Zagari

9
10 Court Reporter: Burton H. Sulzer
11 225 Cadman Plaza East
12 Brooklyn, New York
13 (718) 613-2481

14 Proceedings recorded by mechanical stenography, transcript
15 produced by computer-aided transcription.

16 THE COURT: Good afternoon everyone.

17 It's nice to see you all.

18 Is there anybody on the phone? Everybody is
19 present?

20 When you talk, would you mind giving me your name
21 because we have so many people present.

22 I would like to start you by indicating the papers
23 that I believe I have before me, and if any of you have papers
24 you have submitted that bear on the issue of restitution now
being taken up by the court, please bring that to my
attention.

25 1. The court's memorandum and order, dated

- 1 January 16th preparing for the hearing.
- 2 2. The memorandum of Michael King, dated January 26.
- 3 3. Waiver of defendant William Scotto's appearance,
- 4 February 6th.
- 5 4. Memorandum of the government, February 20th.
- 6 5. Letter of defendant Louis Filippelli,
- 7 February 23rd.
- 8 6. Letter of Louis Mosca, February 24th.
- 9 7. Request by defendant John D'Amico,
- 10 February 22nd.
- 11 8. Waiver of Frank Cali's presence, February 20.
- 12 9. Waiver of Vincent Pacelli's presence,
- 13 February 24th.
- 14 10. Letter of Arthur Zagari, February 24th.
- 15 11. Letter of Joseph Agate, February 24th.
- 16 12. Letter of Nicholas Corozzo, February 25th.
- 17 13. Letter of Richard Gotti, February 25th.
- 18 14. Waiver of Vincent Gotti's appearance,
- 19 February 25th.
- 20 15. The letter of Vincent Gotti, again,
- 21 February 25th.
- 22 16. The letter of defendant Vincent Dragonetti,
- 23 February 25th.
- 24 17. Letter of Local 325, February 25th, 2009.
- 25 18. The court's order of February 25, 2009.

1 19. Memorandum of the government, February 26th.

2 20. Letter of Angelo Ruggiero, February 25th.

3 21. Letter of Robert Epifania, February 25th.

4 Is there anybody who has submitted anything that
5 this court doesn't have before it?

6 MS. KELLMAN: I submitted a letter back on
7 October 5th on behalf of Leonard DiMaria.

8 THE COURT: May I have it?

9 MS. KELLMAN: My copy is written on. I'll give the
10 court a clean copy. I did file it.

11 MR. SHARGEL: Gerald Shargel. I have a letter that
12 is dated October 2nd, 2008.

13 THE COURT: October 5th, Miss Kellman. October 2nd,
14 Shargel.

15 MR. ORDEN: Jeremy Orden for Ernest Grillo from
16 October 2nd.

17 THE COURT: Grillo of October 2nd.

18 MS. SHALLEY: Margaret Shalley for Vincent Pacelli.
19 We submitted two letters, October 3rd and November 31st.

20 THE COURT: October 3rd and November 21st.

21 MR. GILBERT: Michael Gilbert on behalf of Local
22 282. We submitted a letter dated October 30, 2008.

23 MR. PROTACS: Harlan Protacs on behalf of Frank Cali.
24 A letter dated October 3rd, 2008.

25 MS. RESNICK: Ellen Resnick on behalf of Louis

1 Filippelli. I believe the court referenced documents that are
2 in the record as of the last meeting.

3 MS. KEDIA: Sarita Kedia. I submitted a letter on
4 October 2nd, 2008 on behalf of Mario Cassarino, and on behalf
5 of Joseph Corozzo on October 4th, 2008.

6 THE COURT: You have had a waiver of any possible
7 conflict?

8 MS. KEDIA: Yes, your Honor.

9 MR. MAZUREK: Henry Mazurek on behalf of Vincent
10 Dragonetti. Two letters, October 3rd and August 1, 2008.

11 MR. AGNIFILO: Mark Agnifilo. There were two
12 submissions. Only one was mentioned. This is the brief for
13 Michael King submitted in October of last year. This might
14 be the one that you referenced.

15 THE COURT: It's not dated.

16 MR. AGNIFILO: It was submitted, I believe, in
17 October. I can get the date.

18 THE COURT: October.

19 I indicated, of course, the court has the
20 presentence reports with the Probation Department's views.

21 Are there any holder documentation I don't have?

22 Now, by letter of February 25th, Local 325 -- is it
23 represented here today.

24 MR. BROWNELL: It is not.

25 THE COURT: They withdrew their application.

1 MR. BROWNELL: For the reasons stated in his letter.

2 THE COURT: So with the consent of the government,
3 the government's request for restitution to Local 325 is
4 denied.

5 MR. BROWNELL: That's correct.

6 That would involve defendant Mosca and defendant
7 Agate and, to a certain extent, it affects defendant Leonard
8 DiMaria.

9 THE COURT: Any request by 325 can denied.

10 There's another small group that we ought to address
11 before we get to the main points, and that is those who were
12 sentenced at a time when there was no indication, as I recall,
13 in the presentence report and no demand for restitution and
14 the court sentenced the defendant without indicating that
15 there was a restitution issue.

16 Who is present that represents that group?

17 MR. FROCCARO: James Froccaro for Angelo Ruggiero on
18 that issue.

19 MR. PARROTTA: Patrick Parrotta for Mr. Joseph
20 Spinnato on that issue, Judge.

21 MR. RUBENSTEIN: Ron Rubenstein for Arthur Zagari on
22 that issue.

23 MR. DeMARCO: Mark DeMarco for Richard Gotti.

24 MR. WASSERMAN: Mark Wasserman for Vincent Gotti..

25 MS. KEDIA: Sarita Kedia for Mario Cassarino.

1 THE COURT: What is the government's view on that?
2 I think under the statute those parties are released.

3 MR. BROWNELL: Judge, I believe the only defendants
4 that it should apply to are defendants Filippelli and one of
5 the Gottis, I apologize I don't remember which one, which the
6 government specifically on the record indicated at the time of
7 sentence that the government's was not seeking restitution
8 from.

9 For instance, I know as to defendant Mario
10 Cassarino, he was sentenced at a time when we were scheduling
11 the restitution hearing and the court got from all those
12 defendants their consent to have that restitution order after
13 the actual sentence occurred.

14 It really shouldn't apply to very many defendants.

15 THE COURT: That was my impression, that it was just
16 very few of them.

17 MR. FROCCARO: With respect to Mr. Ruggerio, I had
18 attached to my letter to your Honor --

19 MR. BROWNELL: That does apply to Mr. Ruggerio as
20 well.

21 THE COURT: Let me see if I can get that problem
22 straightened out.

23 The government's view is it applies to what? No
24 restitution first. To Local 325. That releases what
25 defendants?

1 MR. BROWNELL: Mosca, Louis Mosca and Joseph Agate.

2 MS. KELLMAN: And Leonard DiMaria to the extent of
3 his exposure on that count.

4 MR. BROWNELL: Yes. I'm sorry.

5 THE COURT: And Leonard DiMaria.

6 Any claim based on Local 325 is denied by consent,
7 Local 325 and the government.

8 Now we have the group of cases where a sentence
9 proceeded by, in effect, a waiver I will say by silence of
10 court and prosecutor.

11 The prosecutor's admission is as to what defendant?

12 MR. BROWNELL: Louis Filippelli, Anthony Ruggiero
13 Junior.

14 MR. FROCCARO: It's Angelo.

15 MR. BROWNELL: I'm sorry.

16 THE COURT: It's what? I didn't hear the remark.
17 Excuse me. What did you say?

18 MR. FROCCARO: Angelo Ruggiero is my client's name,
19 not Anthony.

20 THE COURT: I apologize. Is he here?

21 MR. FROCCARO: He's incarcerated, Judge.

22 THE COURT: Give him my deepest apologies.

23 MR. FROCCARO: Yes, your Honor.

24 THE COURT: Who is the third?

25 MR. BROWNELL: Richard Gotti, your Honor. At that

1 particular time the government did not seek restitution..

2 THE COURT: All right. So those three are denied.

3 Now, who else is seeking on that ground?

4 MR. PARROTTA: Patrick Parrotta for Joseph Spinnato,
5 your Honor. He was sentenced in --

6 THE COURT: Excuse me?

7 MR. PARROTTA: Patrick Parrotta for Joseph Spinnato.

8 THE COURT: What is your view?

9 MR. PARROTTA: My client was sentenced in August of
10 2008. There was no indication by the government that they
11 were seeking restitution.

12 Additionally, on October 2nd of 2008, the
13 government, in their restitution memorandum to the court,
14 stated; with respect to Local 282, defendants Spinnato and
15 Doria pled guilty to mail fraud conspiracy stemming from
16 Spinnato and John Doe 4's failure to pay union wages.

17 I will go on: Spinnato and Doria, a bookkeeper who
18 facilitated the fraud, should not be required to pay
19 restitution for this crime because John Doe 4 has already
20 repaid the union more than \$850,000 in restitution and fines,
21 fully compensating Local 282 for its losses.

22 MR. BROWNELL: Your Honor, as the government
23 informed the court in our submission on February 20th, in fact
24 the full amount of the restitution was not able to be
25 collected.

1 We also did not have the submission of Local 282 at
2 the time of Spinnato's sentencing and of course the government
3 was not seeking any restitution from Spinnato with regard to
4 Joseph Vollaro JD 4. But we were not speaking on behalf of
5 Local 282, who, later on in October of 2008, submitted a
6 fairly lengthy submission to the court outlining what they
7 believe to have been their loss given the crime that
8 Mr. Spinnato and Miss Dauria committed with regard to Local
9 282.

10 THE COURT: If at the time of the sentence, the
11 sentence is imposed under the statute without restitution
12 being ordered, or without an indication that the issue would
13 be addressed within 90 days, or a waiver of the 90-day rule --
14 isn't there a waiver?

15 Let me see the statute. What are you relying on?

16 MR. BROWNELL: Judge, I'm certainly not an expert in
17 this area, but anyway, 18 USC 3664(d)(5). I can actually hand
18 it to the court.

19 THE COURT: I have here.

20 MR. BROWNELL: It indicates that if the government
21 subsequently learns of a victim's losses that did not exceed
22 the 90-day period that the government that the victim actually
23 is still within the 90-day period.

24 In this particular case, Mr. Spinnato was not
25 sentenced until August and the submission by Local 282 was in

1 October, outlining what they believe their loss to be with
2 regard to the fraud that he participated in.

3 THE COURT: Let me read you subdivision 5, which
4 you're relying on.

5 If the victim's losses are not ascertainable by the
6 date that is ten days prior to sentencing, the attorney for
7 the government or the probation officer shall so inform the
8 court and the court shall set a date for the final
9 determination of the victim's losses not to exceed 90 days
10 after sentencing.

11 Did you at the time of sentencing inform the court
12 that the victim's losses were not then ascertainable?

13 MR. BROWNELL: We did not.

14 THE COURT: Then I think you're out under the terms
15 of the statute.

16 The subdivision goes on to say: If the victim
17 subsequently discovers further losses -- which implies that
18 some losses were then brought to the attention at the time of
19 the sentence, but if you didn't bring any losses to the
20 attention of the court at the time of the sentence, I don't
21 think I have authority to impose restitution.

22 MR. BROWNELL: Actually, Judge, I believe in the
23 presentence report, which I don't have for Mr. Spinnato in
24 front of me, there was some indication of losses there. I
25 don't have it with me.

1 THE COURT: This is a tricky point. I do believe
2 that sentencing requires some finality.

3 As everyone here, I think, knows, having
4 participated in my sentencings, I have a very extensive
5 checklist developed over the years, which takes account of
6 most reversals by the Second Circuit of sentencings by
7 district judges in this circuit.

8 There are two historical matters that come to mind
9 in connection with this. Under the old Civil Practice Act,
10 lawyers, after they were admitted to the bar, learned what was
11 required in civil practice at the rate of \$10 a case when they
12 made their mistakes -- and they made a mistake in every
13 case -- so after a certain number of years, having had their
14 client pay these \$10 fees, they became adept. I've collected
15 this on behalf of myself and all others.

16 So we conduct a very thorough examination. The
17 other historical fact that comes to mind is that from the
18 United States Navy. The United States Navy had, particularly
19 when it was a sailing navy, sails instead of other methods of
20 propulsion were used, very extensive regulations on what
21 sailors had to do and when. They had to wear skivvy shirts to
22 keep powder burns off, and things like that, and that's how it
23 developed -- the huge bureaucratic naval regulations developed
24 one tragedy at a time.

25 So it does seem to me that if it hasn't been brought

1 to the attention of the court in that extensive proceeding,
2 that this court conducts, the defendant is entitled to assume
3 that the sentence is the complete judgment of the court.

4 MR. GILBERT: Michael Gilbert on behalf of Local
5 282. I believe there are cases in the circuit that say that
6 if there is no prejudice to the defendant, and that he is
7 still entitled to challenge the claim for restitution, that
8 the 90-day period can and should be excused, particularly
9 where we have, as we have here --

10 THE COURT: No. That is a case where the court was
11 not in a position -- I believe -- you may have other cases,
12 but I believe those cases are in general cases where
13 restitution came up at the time of sentence, they couldn't
14 establish what the restitution should be, 90 days was allowed
15 to make restitution, and then you could extend beyond the
16 90 days for good cause, such as you suggest and, in fact, in
17 this case the court obtained a waiver to go beyond the
18 90 days.

19 But you know these cases better than I. Are there
20 cases where restitution was not raised at the sentence where
21 the 90-day rule exception was applied?

22 MR. GILBERT: Frankly I don't know the answer off
23 the top of my head. I would be happy to submit cases to the
24 court tomorrow if we can find support for that.

25 What's happened here, you have the government submit

1 to the court incorrectly that there was no restitution
2 obligation. They have now corrected that.

3 THE COURT: Excuse me. With all due respect, sir,
4 the union had an obligation to come in, it knew about this
5 case, it knew about its alleged loss, it had an obligation to
6 have a representative here assert its claim.

7 The government, to its credit, had a huge case,
8 which, I parenthetically remark, it handled with great skill
9 and it seems to me, if there is anything remiss here, it's in
10 the union's failure to come forward and protect the union.

11 I don't say that critically of the attorney, of
12 course.

13 MR. GILBERT: We did, your Honor, we assembled very
14 detailed materials outlining all the claims that the union had
15 as a result of this scheme and they were submitted to the
16 court in October.

17 It's true, that was after the sentencing in August,
18 there is no question about that. As I understand it, we
19 weren't involved at the time, but the union did receive some
20 notification from the government about proceedings here, but
21 frankly they weren't that clear and the union, not being --
22 unfortunately for them, the Fund not being familiar with this
23 process, did not read those notices to mean they had to appear
24 here and when we got involved, we certainly advised them
25 that's what they do and that's what we did.

1 THE COURT: They didn't have to appear, but they did
2 had to bring it to the court's attention.

3 This case was a case of common knowledge in the
4 community. Certainly, the union was aware of it because it
5 was a scandal among unions and remains a scandal that these
6 mobs are taking and have taken advantage of many of them.

7 I'll receive briefs on it. You have one week to
8 submit a brief.

9 MR. GILBERT: Thank you, your Honor.

10 THE COURT: I will take one week from the
11 government.

12 I would like, on the record, to know which
13 defendants fall into the category that we are now addressing,
14 that is where restitution is not mentioned at the time of
15 sentence.

16 MS. KEDIA: Sarita Kedia for Mario Cassarino. I know
17 Mr. Brownell has taken a different view, but I do not believe
18 that restitution was mentioned at the time of Mr. Cassarino's
19 sentence.

20 THE COURT: Cassarino?

21 MR. BROWNELL: Do you want me to wait for everybody?

22 THE COURT: Yes. Then you can go back to the
23 record. You have the transcripts and I'll give you a week to
24 put it together and I will decide it.

25 MR. MAZUREK: Henry Mazurek on behalf of Vincent

1 Dragonetti. I have just thoroughly reviewed the sentencing
2 transcript of August 8th.

3 THE COURT: On behalf of who?

4 MR. MAZUREK: Vincent Dragonetti. He was sentenced
5 on August 8th, 2008 and nowhere in the record was restitution
6 raised by the government or addressed in any way.

7 MR. RUBENSTEIN: Ron Rubenstein for the defendant
8 Arthur Zagari. He was sentenced on August 8th of 2008 before
9 your Honor. The judgment provides restitution not applicable.
10 He pled to a money laundering count.

11 THE COURT: Submit a brief. Submit that in writing,
12 would you, because we so many of these cases.

13 MR. RUBENSTEIN: Surely.

14 MR. WASSERMAN: Mark Wasserman on behalf of Vincent
15 Gotti. Your Honor, Vincent Gotti's similar to Richard Gotti.
16 He was sentenced the same day, given the exact sentence --

17 THE COURT: You represent Vincent Gotti?

18 MR. WASSERMAN: I do.

19 THE COURT: Restitution was not mentioned?

20 MR. WASSERMAN: It was not mentioned. In fact, when
21 it was mentioned, it was not applicable. It was raised and
22 the government wasn't seeking restitution. There was no issue
23 as to that.

24 THE COURT: Submit a letter with a motion to deny
25 in the case of all of these people who come within this

1 category, in their opinion.

2 MR. WASSERMAN: I did submit a letter yesterday
3 addressing that issue.

4 THE COURT: If you've done it you've satisfied my
5 request indicating why you come within this category.

6 MR. WASSERMAN: Very well, Judge.

7 THE COURT: Vincent Gotti. Who else?

8 MS. KEDIA: I believe that Joseph Corozzo may fall
9 into that same category. I will check the minutes and submit
10 a letter to the court.

11 THE COURT: Joseph Corozzo.

12 MS. KEDIA: Yes.

13 MR. PARROTTA: Mr. Spinnato you have already listed.
14 I had mentioned it earlier. I want to make sure he's in the
15 same category.

16 THE COURT: I'm finding now Louis Filippelli, Angelo
17 Ruggiero and Richard Gotti are exempt from restitution for the
18 reason already stated in the second category, and that the
19 court will accept within one week written submissions from
20 Vincent Dragonetti, Arthur Zagari, Vincent Gotti, Joseph
21 Corozzo and Joseph Spinnato.

22 MS. KEDIA: And Mario Cassarino, your Honor.

23 THE COURT: And Mario Cassarino on this issue.

24 If I don't get it within a week then I will assume
25 you're not seeking this exemption and restitution will be

1 granted, if the government proves restitution should follow.

2 So that is the second category.

3 Now, the third category is the one union we now
4 have, which is Local what? Who is representing the union who
5 just spoke?

6 MR. GILBERT: Local 282, your Honor.

7 THE COURT: Of what?

8 MR. GILBERT: Actually, the fund of Local 282.

9 THE COURT: Local 282 of what union?

10 MR. GILBERT: Of the International Brotherhood of
11 Teamsters.

12 THE COURT: International Brotherhood of Teamsters?

13 MR. GILBERT: Correct.

14 THE COURT: You are seeking restitution from what
15 defendants.

16 MR. GILBERT: Spinnato.

17 THE COURT: Come forward, please, so I can hear you
18 better or speak into the microphone.

19 MR. GILBERT: We are seeking restitution from
20 defendant Spinnato. Your Honor already ordered restitution as
21 to defendant Dauria.

22 THE COURT: As to Spinnato. The other defendant I
23 ordered restitution --

24 MR. PARROTTA: At the time of sentence, Judge.

25 THE COURT: At the time of sentence, I imposed

1 sentence of restitution of well over a million dollars on one
2 defendant to be paid at the rate of \$25 a month, as I recall.

3 MR. BROWNELL: Miss Dauria, your Honor.

4 THE COURT: To be doubled when and if her income
5 doubles.

6 MR. GILBERT: At that time, your Honor, you also
7 indicated that the restitution obligation should be joint and
8 several with Spinnato.

9 THE COURT: What did I say when Joseph Spinnato was
10 sentenced, which is what is critical, not what I said when
11 some other defendant was sentenced.

12 MR. GILBERT: Understood.

13 THE COURT: Did I make any statement when Spinnato
14 was sentenced is your question and mine?

15 I suggest you check on it. If I didn't, you're in
16 that category of those who you can't get restitution from.

17 MR. GILBERT: We'll check on it.

18 THE COURT: I expect a brief within a week.

19 MR. GILBERT: Thank you.

20 THE COURT: That covers Local 282 of the
21 International Brotherhood of Teamsters.

22 The fourth category is the well-known Mr. No. 4 --
23 who is -- who is he?

24 MR. BROWNELL: Do I have to say? Mr. Vollaro.

25 THE COURT: Mr. Vollaro.

1 Is he the only one now remaining that we have to
2 deal with?

3 MR. BROWNELL: That's correct, Judge.

4 THE COURT: All right. What are you seeking from on
5 behalf of Vollaro? There are a number of subcategories.

6 MR. BROWNELL: That's correct. I submitted on ECF
7 the morning a revised chart, most of which has to do with
8 Mr. Vollaro, minus Local 225;s initial claim.

9 THE COURT: Let's take a look at that. How do you
10 want to proceed with these people?

11 MR. BROWNELL: I have Agent Mellone here who, I
12 understand, testified yesterday and today, who is available to
13 testify in summary fashion regarding those particular issues.

14 THE COURT: Where is the agent?

15 MR. BROWNELL: Here.

16 THE COURT: Come forward, please. Take the witness
17 stand, sir.

18 MR. SHARGEL: Judge, there's one issue with regard
19 to this agent. I understand from the government lawyer that
20 packages of 3500 material are -- I guess it would be 26.2
21 material -- were sent out on Friday.

22 Several of the lawyers, myself included, did not
23 receive that material. So I have not a piece of paper about
24 his testimony. It's quite voluminous, as Miss Kellman is
25 holding it up before you.

1 MS. KELLMAN: Which shouldn't indicate that I
2 received it because I got it as I walked into the courtroom
3 today, having heard about it from a reporter downstairs, grand
4 jury testimony, and a variety of other matters.

5 THE COURT: Thank you.

6 Now, as to Vollaro, there are categories of cases,
7 right.

8 MR. BROWNELL: That's correct, Judge.

9 THE COURT: What are the categories? A.

10 MR. BROWNELL: Trucking.

11 THE COURT: There's one amount for trucking?

12 MR. BROWNELL: That's correct, Judge.

13 THE COURT: And B.

14 MR. BROWNELL: Let me get the list so I don't
15 forget. Liberty View Harbor.

16 THE COURT: B is Liberty View.

17 MR. BROWNELL: Of which there are two parts.

18 THE COURT: Yes.

19 MR. BROWNELL: Staten Island Cement Company profits.

20 THE COURT: And?

21 MR. BROWNELL: Staten Island Cement Company sales.

22 THE COURT: Staten Island Cement Company sales.

23 MR. BROWNELL: Cement powder.

24 THE COURT: 3. Cement powder.

25 MR. BROWNELL: Excavation.

1 THE COURT: 4. Excavation.

2 MR. BROWNELL: Brancoto.

3 THE COURT: That's five.

4 MR. BROWNELL: Excavation was six.

5 THE COURT: No, I have one, Staten Island Cement
6 profits.

7 MR. BROWNELL: Trucking would have been first,
8 Judge.

9 THE COURT: First is trucking?

10 MR. BROWNELL: Yes.

11 THE COURT: Okay. Two is Staten Island Cement.

12 MR. BROWNELL: Yes.

13 Two was Liberty View Harbor.

14 THE COURT: The whole thing is Liberty View, isn't
15 it?

16 MR. BROWNELL: No, Judge.

17 THE COURT: I have the copy here. Trucking is A
18 under 4. Liberty View Harbor is B.

19 MR. BROWNELL: Correct.

20 THE COURT: Staten Island Cement profits is C.

21 MR. BROWNELL: Correct.

22 THE COURT: Staten Island Cement Company sale is D.
23 Cement powder is E.

24 MR. BROWNELL: Excavation would be next.

25 THE COURT: Excavation is F.

1 MR. BROWNELL: Nascar would be G.

2 THE COURT: Nascar is G.

3 MR. BROWNELL: Brancoto would be H. Kilgannon
4 Polakoff payoff would be I.

5 THE COURT: "Payoff" did you say?

6 MR. BROWNELL: Correct.

7 THE COURT: Yes.

8 MR. BROWNELL: Last would be Schiavone.

9 (Continued next page)

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1 THE COURT: That's it?

2 MR. BROWNELL: That is correct, Judge.

3 THE COURT: Okay. On the trucking, we have the
4 amount and then we have who are the defendants you are seeking
5 from?

6 MR. BROWNELL: The trucking would be defendants
7 Nicholas Corozzo, Leonard DeMaria.

8 THE COURT: Wait just a minute.

9 Yes?

10 MR. BROWNELL: And Vincent Dragonetti.

11 THE COURT: Yes?

12 MR. BROWNELL: Joseph Scopo.

13 THE COURT: Yes?

14 MR. BROWNELL: And Robert Epifania.

15 THE COURT: As to them, I take it, you seeking a
16 single amount to be paid jointly and severally?

17 MR. BROWNELL: That is correct, Your Honor.

18 \$128,000.

19 THE COURT: \$128,000?

20 MR. BROWNELL: Eight hundred. I'm sorry. \$128,800.

21 THE COURT: Thank you.

22 Liberty View, who are you seeking against?

23 MR. BROWNELL: Nicholas Corozzo, Leonard DeMaria,
24 Vincent Dragonetti.

25 THE COURT: Just a moment.

1 Yes?

2 MR. BROWNELL: Anthony Scibelli.

3 THE COURT: You are seeking under that heading how
4 much?

5 MR. BROWNELL: As to the first three of those
6 defendants, \$219,809.

7 THE COURT: You seeking how much again?

8 MR. BROWNELL: \$219,809.

9 THE COURT: And the last?

10 MR. BROWNELL: Is to Mr. Scibelli, \$103,853.

11 THE COURT: Say it again.

12 MR. BROWNELL: \$103,853.

13 THE COURT: Okay.

14 MR. SHARGEL: To which we object.

15 THE COURT: C, Staten Island Cement, profits? You
16 are seeking against?

17 MR. BROWNELL: Thomas Cacciopoli, Mario Cassarino,
18 both Nicholas and Joseph Corozzo, Leonard DeMaria, Vincent
19 Dragonetti, Robert Epifania, Louis -- Ernest Grillo and
20 Vincent Pacelli.

21 And the total amount sought --

22 THE COURT: Vincent, what's his last name?

23 MR. BROWNELL: Pacelli, P A C E L L I.

24 THE COURT: Total is?

25 MR. BROWNELL: \$54,496.

1 THE COURT: Okay. Staten Island Cement sale?

2 MR. BROWNELL: Thomas Cacciopoli.

3 THE COURT: Thomas?

4 MR. BROWNELL: Cacciopoli, Domenico Cefalu.

5 THE COURT: Domenico?

6 MR. BROWNELL: C E F A L U, Mr. Cefalu.

7 THE COURT: Yes?

8 MR. BROWNELL: Both Nicholas and Joseph Corozzo,
9 John D'Amico, Leonard DeMaria and Augustus Sclafani.

10 THE COURT: You are seeking a single amount --

11 MR. BROWNELL: Yes. \$8,000.

12 THE COURT: -- as to cement powder?

13 MR. BROWNELL: Three defendants, Nicholas Corozzo,
14 Leonard DeMaria and Vincent Dragonetti.

15 The total is \$6,000.

16 THE COURT: Yes?

17 MR. BROWNELL: Excavation is the next category.
18 Nicholas Corozzo, Leonard DeMaria.

19 THE COURT: Wait just a moment.

20 MR. BROWNELL: Vincent Dragonetti and Arthur Zagari.

21 The total is \$36,000.

22 THE COURT: Okay. Nascar.

23 MR. BROWNELL: Nascar, Frank Cali, Mario Cassarino,
24 Nicholas Corozzo, Leonard DeMaria.

25 THE COURT: Wait just a moment, please.

1 Yes?

2 MR. BROWNELL: And Vincent Dragonetti.

3 The total is \$8,000.

4 THE COURT: Okay.

5 MR. BROWNELL: Brancato.

6 THE COURT: Yes?

7 MR. BROWNELL: Jerry Brancato, Joseph Chirico,
8 Nicholas Corozzo.

9 THE COURT: Yes?

10 MR. BROWNELL: Leonard DeMaria, Vincent Dragonetti.

11 The total is \$4,000.

12 THE COURT: Okay.

13 MR. BROWNELL: The Kilgannon-Polakoff payoff is
14 Kilgannon-Polakoff. Just so Your Honor knows, Kilgannon has
15 already paid \$4,500.

16 The total amount is \$9,000.

17 Then lastly --

18 THE COURT: Wait just a moment, please.

19 Yes?

20 MR. BROWNELL: Schiavone, there are two defendants,
21 Nicholas Calvo, C A L V O, and Michael King.

22 THE COURT: Michael?

23 MR. BROWNELL: King.

24 And the total is \$119,000. \$119,700. I didn't say
25 that right.

1 THE COURT: Is there anybody else present who is
2 seeking restitution in these related cases?

3 Since there is no answer, and this matter has been
4 fully publicized, the Court assumes that this constitutes the
5 total amount of the claims.

6 All right. We will proceed. The government will
7 now proceed to meet its burden by calling its first witness.

8 MR. SHARGELL: Judge, before we do that, may I step
9 out for two minutes?

10 THE COURT: Does anybody else want a break? Shall
11 we take a break of a few minutes for everybody?

12 MS. MACEDONIO: Yes.

13 THE COURT: Yes. Everybody wants a break. You
14 touched a raw nerve.

15 (Pause.)

16 THE COURT: May I see the government?

17 This is an application on behalf of?

18 MR. BENFANTE: On behalf of Joseph Chirico, Your
19 Honor. This is Joseph Benfante on his behalf.

20 I fell asleep at the switch, so to speak. I
21 misheard the judge.

22 I should be in the first category as my case was --
23 my client has been sentenced and it was discussed at
24 sentencing, restitution, but was -- it was put off until
25 today, the determination by the Court.

1 MR. BROWNELL: The 90 days was waived.

2 MR. BENFANTE: I agree with you. The 90 days was
3 waived, Judge, yes.

4 I -- everybody else is in the case. I am here
5 because of \$4,000. I wanted to make sure the Court knew that.

6 There is a claim extant, Your Honor. There is a
7 claim outstanding. It is not waived by the government.

8 THE COURT: Which claim is this?

9 MR. BROWNELL: Judge, I think -- I think Mr. Chirico
10 is in the category of most of the other defendants. We
11 didn't -- you didn't order restitution at the time of sentence
12 because we knew that there was going to be a sentencing
13 hearing later on.

14 MR. BENFANTE: Exactly.

15 MR. BROWNELL: At the time the 90-day period was
16 waived.

17 THE COURT: Okay. So you are seeking restitution
18 from him?

19 MR. BROWNELL: Exactly.

20 MR. BENFANTE: I wanted to make sure, Judge.

21 THE COURT: Okay.

22 MR. BENFANTE: Thank you, Judge.

23 (Recess taken.)

24 (Continued on next page.)

25

1 MR. BROWNELL: These will be the exhibits for this
2 afternoon, RH-1 through eleven, and then under some of the
3 exhibits eight, nine and eleven, there are letter -- there are
4 additional exhibits, A through double A, A through U, and A
5 through N.

6 I presume, Judge, you want me to go quickly through
7 this?

8 THE COURT: Swear the witness, please.

9 THE CLERK: Please stand, sir.

10 Do you understand your obligation to tell the truth,
11 the whole truth, and nothing but the truth, under penalty of
12 perjury?

13 THE WITNESS: Yes.

14 THE CLERK: Please be seated.

15 State and spell your full name.

16 THE WITNESS: Jonathan Mellone, M E L L O N.

17 THE COURT: Speak up, please.

18 State your name.

19 THE WITNESS: Jonathan Mellone.

20 MR. DeMARCO: Your Honor, before the government
21 proceeds with the examination of this witness, may I be
22 excused, since the claim against Richard Gotti was dismissed?

23 THE COURT: Yes.

24 MR. WASSERMAN: Your Honor, I understand from the
25 Assistant that they are not going to be presenting any

1 evidence today as to Vincent Gotti. I will have my submission
2 to you in a week.

3 THE COURT: Yes. You are excused.

4 MR. WASSERMAN: Thank you very much.

5 MS. RESNICK: On behalf of Louis Filippelli, may I
6 be excused in that capacity?

7 THE COURT: No objection?

8 You are excused.

9 MS. RESNICK: Your Honor, I also want to know if I
10 may be excused as I am representing Bettina Schein for
11 purposes of the Polakoff payoff. I simply wish to join in the
12 applications made by cocounsel with respect to the
13 credibility.

14 THE COURT: You may have a judgment against your
15 client. Is that right?

16 MS. RESNICK: Depending on what happens here today.
17 I am not sure how far Your Honor is prepared to go this
18 afternoon.

19 THE COURT: Your client, if you don't wish to
20 represent him, is exposed to whatever the Court will do.

21 MS. RESNICK: Thank you, Your Honor.

22 MR. GINSBERG: Your Honor, for William Scotto.

23 The government in its recent submissions has
24 indicated that it's not seeking restitution for Mr. Scotto,
25 though it earlier had indicated that it was.

1 May I be excused?

2 MR. BROWNELL: That is correct, Judge.

3 THE COURT: You are excused.

4 MR. GINSBERG: Thank you.

5 THE COURT: Anybody else?

6 All right. We will hear from this government
7 witness.

8 DIRECT EXAMINATION.

9 BY MR. BROWNELL:

10 Q Mr. Mellone, how long have you been an agent with the
11 Department of Labor Inspector General's Office?

12 A A little over seven years.

13 Q During the course of those seven years, in general, what
14 kind of investigations have you been involved with?

15 A Investigations into union corruption and organized
16 crimes's involvement in labor markets.

17 Q Did there come a time a couple of years ago that you
18 became involved in an investigation involving, among other
19 people, an individual named Joseph Vollaro?

20 A Yes.

21 Q What was the nature of that investigation, just very
22 briefly?

23 A There were allegations that Joseph Vollaro was operating
24 a trucking company out of Staten Island that had a collective
25 bargaining agreement with Local 282 of the International

1 Brotherhood of Teamsters. Under that collective bargaining
2 agreement, they were required to pay union wages on all of
3 their employees. It was alleged at the time that he had
4 another shop, another trucking company, where he paid his
5 union employees nonunion wages.

6 Q Did there come a time when you and other agents involved
7 with your investigation arrested Mr. Vollaro?

8 A Yes.

9 Q Was that in January of 2005?

10 A Yes.

11 Q When Mr. Vollaro was arrested, was anything found in his
12 possession?

13 A He had a half a kilogram of cocaine with him.

14 Q Upon his arrest, or within hours afterwards, did he agree
15 to cooperate with the government?

16 A He did.

17 Q Again, very briefly, what was the nature of his
18 cooperation with the government?

19 A He was to record all conversations related to organized
20 crime, members and associates of organized crime, and anyone
21 involved in criminal activities.

22 Q Was he given a device by law enforcement in which to make
23 these recordings?

24 A He was.

25 Q At the time of his arrest, was he involved in the running

1 of any companies?

2 A At the time of his arrest he had two companies, a
3 trucking company and a cement company.

4 Q During the course of his cooperation that started in
5 January of 2005 -- and when did it end approximately?

6 A In January 2008.

7 Q I am referring -- during that time period that you have
8 just mentioned, did he in fact make recordings of various
9 individuals?

10 A He did.

11 Q How was it that you and other members of the law
12 enforcement team involved in this investigation collected
13 those conversations that were recorded?

14 A We arranged to meet Joe Vollaro approximately once a week
15 at a location where he would leave the recorder, leave the
16 location. I'd meet him, get the recorder, switch it with
17 another recorder. I would then leave the location and he
18 would come back and get the recorder.

19 Q Did members of the law enforcement team take any measures
20 to ensure that Mr. Vollaro was in fact doing what he was
21 supposed to do in terms of making the recordings?

22 A Yes.

23 Q What -- again, in summary fashion, what did the team do?

24 A We had other law enforcement sources that were able to
25 confirm who he was meeting with at different times, as well as

1 other cooperating witnesses that were able to verify what Joe
2 Vollaro was doing.

3 We were also up on wiretaps that we were able to
4 confirm activities of Joe Vollaro.

5 Q Did you have an occasion during the course of this
6 investigation to listen to the various recordings that were
7 made in conversations with Mr. Vollaro during this period?

8 A I did.

9 Q When did you listen to them in reference to when they
10 were actually recorded?

11 A Within a day or so of getting the recordings downloaded
12 and back.

13 Q During the course of Mr. Vollaro's cooperation with the
14 government from January of 2005 at least through January of
15 2008, did he make various payments to known organized crime
16 figures and other people involving various extortions that
17 have been the subject matter of this case?

18 A He did.

19 Q Was there a way in which you and the other members of the
20 team verified when the payments were being made and the
21 amounts of the payments that were being made?

22 A Myself or other agents spoke with Joe Vollaro in the
23 morning and were given a detailed outline of what his plans
24 were for the day. And then after every meet that he recorded,
25 he would call in and give a detail of who he met with and what

1 the meet was about.

2 Q Were these payments made in cash?

3 Were they made in check?

4 Were they made in other forms, or were they made by
5 cash and check?

6 A Cash and check.

7 Q First I would like to talk about the trucking company.

8 At the time of Mr. Vollaro's arrest in January of
9 2005, what were the name or names of his trucking companies?

10 A His union truck company was Andrews Trucking and his
11 nonunion trucking company was Dump Masters.

12 Q Did he have a partner in those companies?

13 A Yes.

14 Q What was the name of his partner?

15 A Joseph Spinnato.

16 Q At the time of his arrest in January of 2005, were those
17 trucking companies under the control of any organized crime
18 figures?

19 A They were.

20 Q Who were they under the control of?

21 A Thomas Cacciopoli.

22 Q And who is Thomas Cacciopoli?

23 A He's a captain in the Gambino Crime Family.

24 Q Upon Mr. Vollaro's arrest, did he give you information
25 regarding the history of that particular company?

1 A He did.

2 Q In summary fashion, could you tell us what he told you
3 regarding how it was that that trucking company, or those
4 trucking companies, came under the control of Mr. Cacciopoli?

5 A In --

6 MR. SHARGELL: Your Honor, I object to this under
7 Crawford v Washington. Any conversation with Mr. Vollaro is
8 testimonial in nature.

9 MS. KELLMAN: I join in that application on behalf
10 of Mr. DeMaria.

11 MR. BROWNELL: Judge, I believe at a restitution
12 hearing hearsay is admissible.

13 MR. SHARGELL: But the confrontation clause still
14 applies.

15 THE COURT: What's the government's response?

16 MR. BROWNELL: Judge, again, in an evidentiary
17 hearing, this is different than a trial, that the testimony
18 should be allowed, the hearsay, that Mr. Vollaro told,
19 especially a restitution hearing.

20 THE COURT: I don't think that's a sensible rule of
21 law because the person seeking restitution generally will tend
22 to exaggerate what's due and the person who is acting in
23 effect as an agent of the person seeking restitution will be
24 under the same pressures.

25 MR. BROWNELL: Judge, except that I believe at the

1 time that these conversations would have taken place between
2 Mr. Vollaro and the agent back in January of 2005, restitution
3 was not a subject -- was on the mind of either the agent or
4 Mr. Vollaro regarding these conversations.

5 THE COURT: I think the Supreme Court has said, has
6 it not, that restitution has the effect of punishment as well
7 as compensation. Is that so?

8 MR. BROWNELL: Judge, I honestly don't know.

9 THE COURT: I think that's so.

10 We have a great assemblage of experts on criminal
11 law. Is that so?

12 MR. SHARGELL: I believe that is so.

13 MR. BROWNELL: I can ask it another way.

14 THE COURT: Yes. If you withdraw the question and
15 you want to put another question, you are free to proceed.

16 MR. BROWNELL: Thank you.

17 EXAMINATION CONTINUES

18 BY MR. BROWNELL:

19 Q Agent Mellone, would it be safe to say there were
20 literally hundreds of conversations that were recorded during
21 the course of Mr. Vollaro's cooperation from February of 2005
22 through January of 2008?

23 A Approximately nine hundred.

24 Q You have had an opportunity to listen to those
25 conversations?

1 A I have.

2 Q During the course of those conversations, were there any
3 discussions, especially with Joseph Spinnato and Thomas
4 Cacciopoli and other members of the Gambino Family, discussing
5 the history of the trucking company that we have been talking
6 about?

7 A There were.

8 Q I am going to ask you to base the answers to my questions
9 on your listening to those particular conversations.

10 A Okay.

11 Q With regard --

12 MR. SHARGELL: If I may?

13 It depends on who he is listening to. If he is
14 listening to a party and it is the admission of a party
15 opponents, that's one thing. But if he is basing it on the
16 testimonial statements of a cooperator who is beyond the reach
17 of cross-examination -- and Your Honor will recall that we
18 subpoenaed Vollaro's attendance here. Your Honor quashed
19 those subpoenas. We wanted to exercise our rights to
20 cross-examine Mr. Vollaro.

21 MR. BROWNELL: Judge, this is not -- I am not asking
22 anything with regard to testimony. I am asking the agent to
23 testify based on his listening of consensually recorded
24 conversations made during the course of this investigation.

25 MR. SHARGEL: Judge, you instruct juries, it's not

1 the words of the informant that counts. It's the words of the
2 party. The purpose of the informant's statement is just to
3 put the conversation in context.

4 THE COURT: That is correct.

5 MR. SHARGEL: This is hearsay. There is a
6 constitutional violation here.

7 MR. BROWNELL: It's not hearsay.

8 THE COURT: However, these people who were being
9 recorded by the cooperating witness were by rule for the
10 purpose of admissibility members of the conspiracy and these
11 statements were being made by those members in furtherance and
12 during the course of the conspiracy. On the tapes the
13 statement of Vollaro will not come in for what Vollaro said
14 but just to put in context the statements of the
15 coconspirators that they believed were being made in
16 furtherance of the conspiracy.

17 MR. SHARGEL: I fully agree with that. No question
18 about that.

19 But what the question invited -- the question was
20 broader than that.

21 THE COURT: Yes.

22 MR. SHARGEL: The question was essentially, what did
23 you learn from listening to the tapes.

24 THE COURT: Correct.

25 MR. SHARGEL: That's an improper question, I

1 respectfully submit. It's too broad. The agent is then free
2 to testify to what Vollaro was saying on the tapes, which were
3 not statements made in furtherance of the conspiracy under
4 801(d)(2)(E). They were statements that were made by a
5 cooperating witness who wasn't a member of the conspiracy at
6 the time.

7 THE COURT: Correct.

8 Do you want to put in all the recordings?

9 MR. BROWNELL: I don't have them to put in evidence.
10 But I will certainly ask that they be put in.

11 THE COURT: Based on the objection and the
12 concession of learned counsel, I would imagine the recordings
13 would come in with transcripts to assist the Court in
14 understanding them.

15 Correct?

16 MR. SHARGEL: Correct, sir.

17 MR. BROWNELL: Judge, I can get that to the Court.
18 It's a number of disks. I don't know that everything is
19 transcribed.

20 THE COURT: I know.

21 But you are going to have to give it to the counsel.

22 MR. BROWNELL: The recordings have been made
23 available to counsel and have been available since, I believe,
24 May of 2008.

25 THE COURT: All of the recordings?

1 MR. BROWNELL: All of them have been made available
2 for counsel for months.

3 MR. SHARGEL: We have them. If he is going to rely
4 on them, then I respectfully submit that he should play the
5 portions on which he is relying instead of some broad question
6 put. We are ready to have the tapes played. We have studied
7 them.

8 MS KELLMAN: I would love to cross-examine
9 Mr. Vollaro on them.

10 MR. BROWNELL: Judge, as the government submitted in
11 its October submissions on this case, there is case law under
12 the Victim Act that it is not necessary for the victim
13 actually to appear in court. Given the nature of this
14 particular case, given the nature of organized crime,
15 especially the Gambino Crime Family, especially during the
16 last four weeks of testimony involving one of its most
17 murderous members, I think the Court can understand how
18 Mr. Vollaro and certainly the government is not interested in
19 having him appear since he's been involved in Witness
20 Protection.

21 THE COURT: I understand.

22 That's not the only way. We can authenticate them
23 through the witness and other means and then you will rely on
24 the tapes the way they did in the present case that the Court
25 is trying.

1 I take it, that's the defendant's suggestion?

2 MR. SHARGEL: Yes, sir.

3 MS KELLMAN: Yes.

4 THE COURT: I think the hearsay rules are loosened
5 up and the burden of proof is certainly, I think, probably
6 less.

7 MR. BROWNELL: I believe it's by a preponderance.

8 THE COURT: But I can't -- that's right. But I
9 can't avoid completely proof and providing the ability to the
10 defendants to contest. We are dealing with a lot of money
11 here. Restitution, as I say, is partly punitive.

12 Do you want to consult with cocounsel and decide
13 what you want to do?

14 (Pause.)

15 MR. BROWNELL: Your Honor, what I will
16 elicit -- what I would seek to elicit from the agent is not
17 the statements of Mr. Vollaro on the tapes but the statements
18 of the coconspirators. I will get to the Court all of the
19 conversations involving this particular case.

20 THE COURT: Are you making the Best Evidence rule?

21 MR. SHARGEL: Yes. The Best Evidence would be the
22 tapes.

23 THE COURT: I think they are entitled to see the
24 tapes, to listen to them. We had that in the pending case
25 that we are trying --

1 MR. BROWNELL: Judge, we are --

2 THE COURT: -- involving this witness and these
3 tapes.

4 MR. BROWNELL: Judge, we are free to do that.
5 Obviously, if that's what is required. We are talking about
6 weeks of testimony, given that we are talking essentially
7 about the whole investigation for three years. That's fine.
8 I am not prepared to do that today.

9 THE COURT: I understand. I am not criticizing you.
10 We are dealing with an awful lot of money and a lot of tapes
11 and a lot of defendants.

12 MR. BROWNELL: I --

13 THE COURT: You can ask for a continuance.

14 MR. BROWNELL: Judge, I am going to need a
15 continuance to do that, to put all of this together. I am not
16 saying -- I am just indicating this is going to take
17 many -- this is going to take a couple of weeks to do.
18 Because there are -- obviously, there are -- we are not saying
19 we'd need all nine hundred. There are -- most of the
20 conversations are by members of organized crime who are
21 involved in this particular hearing.

22 THE COURT: One of the initial reactions of the
23 Court was not to give Vollaro any restitution because of, in
24 effect, the clean hands doctrine and his participation. But
25 he has now stipulated that he is not to take any of the money.

1 It's all to go into the fund --

2 MR. BROWNELL: That is correct.

3 THE COURT: -- for victims.

4 Well, I understand the position.

5 There are two alternatives besides the Court sitting
6 for several weeks, or months, I would think, hearing all of
7 this testimony, the cross-examination and the subpoenaing of
8 the witness Vollaro by the defendants, is that correct?

9 MR. SHARGEL: We have done that.

10 MS. KELLMAN: We did that already.

11 THE COURT: One alternative, since I have a very
12 heavy trial calendar, would be to refer it to the Magistrate
13 Judge to conduct these hearings at great length, to decide how
14 much should be given in restitution on each of these theories
15 and how much should be assigned individually or jointly or
16 severally. That's one method of doing it.

17 The other method besides my doing it, which I would
18 look forward to with great pleasure in view of the quality of
19 the defense counsel here -- it would give me great pleasure
20 the work with for months in the future -- the other
21 alternative would be the alternative that we used in Newsday,
22 the Newsday case, where restitution for overcharging and
23 overbilling advertisers due to excessive counts of sales of
24 newspapers. Do you remember that case?

25 MR. BROWNELL: I do. (Continued on next page.)

1 THE COURT: We dispose it readily by settling.
2 That's the second opportunity. I understand each of the
3 defendants now represented may have access to enormous assets;
4 therefore, we'll be able to retain for weeks or months at
5 least these distinguished counsel, to retain them.

6 It's always useful to settle, particularly since the
7 money is not going to the restitutee but to the fund.

8 We could appoint the magistrate judge to help settle
9 is or actually go ahead and try it.

10 MR. MAZUREK: I think your initial impressions were
11 corrected. I don't believe the fact that the government has
12 now made this representation that Mr. Vollaro in his gracious
13 spirit has decided to assign his restitution award to a fund;
14 a victims' fund changes that analysis. He is still the
15 alleged victim in the restitution hearing under the M B R A.
16 Whatever he decides to do with the money once the award is
17 given to him --

18 THE COURT: The award won't be made to him. The
19 award will be directly to the fund. I would expect a
20 stipulation.

21 MR. BROWNELL: That's correct.

22 THE COURT: The award would be made to the fund by
23 assignment.

24 MR. MAZUREK: Under 3664, the victim, that is the
25 person who the restitution is ordered to has to make that

1 designation.

2 THE COURT: That's right, and we'll get it.

3 MR. MAZUREK: In the first instance, the court
4 would have to make a determination Mr. Vallaro is a victim
5 under the statute.

6 THE COURT: You may be right, but my tentative
7 ruling is that he can assign it under these circumstances.

8 MR. MAZUREK: Only if he is a victim, found to be a
9 victim under the statute in the first place. I would argue,
10 based on all the papers that have been submitted on this issue
11 with respect to the Reifler and Ojeikere case --

12 THE COURT: I understand your position. I rejected
13 it at the outset. I'm not inclined to accept that position.

14 However, in any settlement negotiation, that would
15 be a factor to be taken into account in reducing possible
16 amounts and deciding on allocations. I would think in
17 negotiations it should be given substantial consideration.

18 MR. MAZUREK: As your Honor is aware, at the time
19 of a lot of the defendants' sentencing in this case, your
20 Honor ordered substantial fines on many of the defendants
21 which also went to the United States Government, to the
22 victims fund --

23 THE COURT: No. Fines, as you know, go into the
24 general treasury. We have a great deficit at this point. The
25 courts are doing their best to reduce the deficit. That's an

1 entirely different fund.

2 MR. SHARGEL: Everyone here, government counsel,
3 defense counsel went to great lengths to settle this case,
4 avoid a trial, at least as to virtually all the defendants.
5 I know you're on trial now.

6 In light of the fact the government said it's not
7 ready to go forward this afternoon, that another two weeks
8 might be appropriate to have more discussions with the
9 government, see if we can resolve the matter. I don't know if
10 I'm speaking for anyone else.

11 MS. MACEDONIO: You are.

12 THE COURT: It's always best to settle these things
13 because the government itself is so burdened, has so many
14 fascinating cases involving frauds now in the Eastern
15 District, involving hundreds of billions of dollars that they
16 want to devote their attention to.

17 MR. BROWNELL: Agent Mellone and myself were so
18 looking forward to doing this this afternoon.

19 THE COURT: I know you were. I appreciate that.
20 I would hate to see a settlement deny you that pleasure and
21 deny me that pleasure.

22 I take it all defendants are now, with the consent
23 of the government, asking for a two-week adjournment so they
24 can explore other alternatives?

25 MS. KEDIA: Some of us have indicated we're going

1 to submit letters to the court with respect to the issue
2 whether restitution was raised at the time of sentencing.
3 I still intend to do so within a week.

4 THE COURT: If there's no objection, I'll explore
5 with Judge Levy when he will be available, should there be a
6 reference to try what I estimate would be a six-week trial on
7 the restitution issue.

8 MR. BENFANTE: In the two-week hiatus, if a
9 settlement is reached, I'm sure we can contact Ms. Lowe and
10 obviate the necessity of further proceedings?

11 THE COURT: You can submit a stipulation. I'll be
12 happy to consider it.

13 MR. BENFANTE: Thank you.

14 THE COURT: Therefore, on motion of all parties
15 concerned, a continuance is taken until March 12th at 10:00
16 a.m.

17 MR. FRANZ: I will be out of town from the 11th
18 through the 17th. I don't know if we can do another week or
19 ask somebody to stand up for me?

20 THE COURT: If you want another date, it's probably
21 best if somebody stood up for you. It's hard to get
22 everybody, in such a large group, together. I'll explore with
23 the magistrate judge when he will be available to start this
24 six-week hearing.

25 MR. BROWNELL: Might I suggest since we're all

1 here, when we're done, it might be good for people to stay, at
2 least to see where we're starting off from.

3 THE COURT: The courtroom is available for you
4 until 4:00 o'clock when my trial convenes again. Thank you
5 very much. It's always a great pleasure.

6 (Whereupon this matter concluded for this date.)

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\$	23rd [1] - 4:7 24th [4] - 4:8, 4:13, 4:14, 4:15 25 [1] - 4:25 25th [9] - 4:16, 4:17, 4:19, 4:21, 4:23, 4:24, 5:2, 5:3, 6:22 26 [2] - 1:9, 4:2 26.2 [1] - 21:20 26th [1] - 5:1 271 [1] - 1:17 282 [14] - 3:3, 5:22, 10:14, 10:21, 11:1, 11:5, 11:9, 11:25, 14:5, 19:6, 19:8, 19:9, 20:20, 33:25 2:00 [1] - 1:9 2nd [6] - 5:12, 5:13, 5:16, 5:17, 6:4, 10:12	9
0	3	a.m [1] - 50:16 ability [1] - 44:9 able [5] - 10:24, 35:24, 36:1, 36:3, 47:4 accept [2] - 18:19, 48:13 access [1] - 47:3 account [2] - 13:5, 48:15 Act [2] - 13:9, 43:12 acting [1] - 38:22 activities [2] - 34:21, 36:4 actual [1] - 8:13 additional [1] - 31:4 Additionally [1] - 10:12 address [1] - 7:10 addressed [2] - 11:13, 17:6 addressing [2] - 16:13, 18:3 adept [1] - 13:14 adjournment [1] - 49:23 admissibility [1] - 41:10 admissible [1] - 38:12 admission [2] - 9:11, 40:14 admitted [1] - 13:10 advantage [1] - 16:6 advertisers [1] - 46:23 advised [1] - 15:24 affects [1] - 7:7 afternoon [5] - 3:14, 31:2, 32:18, 49:7, 49:18 afterwards [1] - 34:14 Agate [3] - 4:15, 7:7, 9:1 AGATE [1] - 1:8 Agent [3] - 21:11, 39:19, 49:17 agent [9] - 21:14, 21:19, 33:10, 38:23, 39:2, 39:3, 40:22, 42:1, 44:16 agents [2] - 34:6, 36:22 AGNIFILo [3] - 1:21, 6:11, 6:16 Agnifilo [1] - 6:11 ago [1] - 33:17 agree [3] - 30:2, 34:14, 41:17 agreement [2] - 33:25, 34:2 ahead [1] - 47:9 aided [1] - 3:10 al [1] - 1:8 allegations [1] - 33:23 alleged [3] - 15:5, 34:3, 47:15 allocations [1] - 48:16 allowed [2] - 14:14, 38:18 alternative [3] - 46:11, 46:21 alternatives [2] - 46:5, 49:24 AMERICA [1] - 1:4
08-076 [1] - 1:4	4	
1		
1 [2] - 3:25, 6:10 10 [1] - 4:14 10:00 [1] - 50:15 11 [1] - 4:15 11th [1] - 50:17 12 [1] - 4:16 12th [1] - 50:15 13 [1] - 4:17 14 [1] - 4:18 15 [1] - 4:20 16 [1] - 4:22 16th [1] - 4:1 17 [1] - 4:24 17th [1] - 50:18 18 [2] - 4:25, 11:17 19 [1] - 5:1	5	
2		
2 [1] - 4:2 20 [2] - 4:11, 5:2 2005 [7] - 34:9, 35:5, 36:14, 37:9, 37:16, 39:2, 39:21 2008 [15] - 5:12, 5:22, 5:24, 6:4, 6:5, 6:10, 10:10, 10:12, 11:5, 17:5, 17:8, 35:6, 36:15, 39:22, 42:24 2009 [3] - 1:9, 4:24, 4:25 20th [2] - 4:5, 10:23 21 [1] - 5:3 21st [1] - 5:20 225 [1] - 3:7 225;s [1] - 21:8 22nd [1] - 4:10	6	
	7	
	8	
	8 [1] - 4:11 801(d)(2)(E) [1] - 42:4 8th [3] - 17:2, 17:5, 17:8	

<p>amount [8] - 10:24, 22:11, 25:4, 25:16, 26:21, 27:10, 28:16, 29:5 amounts [2] - 36:21, 48:16 analysis [1] - 47:14 Andrews [1] - 37:10 Angelo [5] - 5:2, 7:17, 9:14, 9:18, 18:16 answer [2] - 14:22, 29:3 answers [1] - 40:8 Anthony [3] - 9:12, 9:19, 26:2 anyway [1] - 11:17 apologies [1] - 9:22 apologize [2] - 8:5, 9:20 appear [4] - 15:23, 16:1, 43:13, 43:19 appearance [2] - 4:3, 4:18 APPEARANCES [1] - 1:14 applicable [2] - 17:9, 17:21 application [3] - 6:25, 29:17, 38:9 applications [1] - 32:12 applied [1] - 14:21 applies [2] - 8:23, 38:14 apply [3] - 8:4, 8:14, 8:19 appoint [1] - 47:8 appreciate [1] - 49:19 appropriate [1] - 49:8 area [1] - 11:17 argue [1] - 48:9 arranged [1] - 35:14 arrest [6] - 34:14, 34:25, 35:2, 37:8, 37:16, 37:24 arrested [2] - 34:7, 34:11 Arthur [5] - 4:14, 7:21, 17:8, 18:20, 27:20 ascertainable [2] - 12:5, 12:12 asleep [1] - 29:20 assemblage [1] - 39:10 assembled [1] - 15:13 assert [1] - 15:6 assets [1] - 47:3 assign [2] - 47:13, 48:7 assigned [1] - 46:15 assignment [1] - 47:23 assist [1] - 42:13 Assistant [2] - 1:17, 31:25 associates [1] - 34:20 assume [2] - 14:2, 18:24 assumes [1] - 29:4 attached [1] - 8:18 attendance [1] - 40:18 attention [6] - 3:24, 12:18, 12:20, 14:1, 16:2, 49:16 attorney [2] - 12:6, 15:11 Attorney [23] - 1:16, 1:17, 1:20, 1:22, 1:23, 1:25, 2:1, 2:3, 2:5, 2:8, 2:10, 2:12, 2:14, 2:16, 2:17, 2:19, 2:21, 2:23, 2:24, 3:1, 3:3, 3:4, 3:6 August [7] - 6:10, 10:9, 11:25, 15:17, 17:2, 17:5, 17:8 Augustus [1] - 27:9 authenticate [1] - 43:22 authority [1] - 12:21 </p>	<p>available [7] - 21:1, 2, 4, 23, 43:1, 50:5, 50:23, 51:3 avoid [2] - 44:9, 49:4 award [5] - 47:13, 47:16, 47:18, 47:19, 47:22 aware [2] - 16:4, 48:18 awful [1] - 45:10</p> <hr/> <p style="text-align: center;">B</p> <p>bar [1] - 13:10 bargaining [2] - 33:25, 34:1 base [1] - 40:8 Based [1] - 42:11 based [3] - 9:6, 40:23, 48:10 basing [1] - 40:15 bear [1] - 3:22 became [2] - 13:14, 33:18 BEFORE [1] - 1:12 behalf [19] - 5:7, 5:21, 5:23, 5:25, 6:4, 6:9, 11:4, 13:15, 14:4, 16:25, 17:3, 17:14, 21:5, 29:17, 29:18, 29:19, 32:5, 38:9 Benfante [1] - 29:19 BENFANTE [8] - 2:3, 29:18, 30:2, 30:14, 30:20, 30:22, 50:8, 50:13 BENTON [1] - 1:15 best [3] - 48:25, 49:12, 50:21 Best [2] - 44:20, 44:21 better [2] - 14:19, 19:18 Bettina [1] - 32:10 BETTINA [1] - 2:11 between [1] - 39:1 beyond [3] - 14:15, 14:17, 40:16 billions [1] - 49:15 bookkeeper [1] - 10:17 Brancato [2] - 28:5, 28:7 Brancoto [2] - 23:2, 24:3 break [3] - 29:10, 29:11, 29:13 brief [4] - 6:12, 16:8, 17:11, 20:18 briefly [2] - 33:22, 34:17 briefs [1] - 16:7 bring [3] - 3:23, 12:19, 16:2 broad [2] - 42:1, 43:5 broader [1] - 41:20 Brooklyn [3] - 1:7, 1:18, 3:8 Brotherhood [4] - 19:10, 19:12, 20:21, 34:1 brought [2] - 12:18, 13:25 BROWNELL [109] - 1:16, 6:24, 7:1, 7:5, 8:3, 8:19, 9:1, 9:4, 9:12, 9:15, 9:25, 10:22, 11:16, 11:20, 12:13, 12:22, 16:21, 20:3, 20:24, 21:3, 21:6, 21:11, 21:15, 22:8, 22:10, 22:12, 22:14, 22:17, 22:19, 22:21, 22:23, 22:25, 23:2, 23:4, 23:7, 23:10, 23:12, 23:16, 23:19, 23:21, 23:24, 24:1, 24:3, 24:6, 24:8, 25:2, 25:6, 25:10, 25:12, 25:14, 25:17, 25:20, 25:23, 26:2, 26:5, 26:8, 26:10, 26:12, 26:17, 26:23, 26:25, 27:2, 27:4, 27:6,</p>	<p>27:8, 27:11, 27:13, 27:17, 27:20, 27:23, 28:2, 28:5, 28:7, 28:10, 28:13, 28:20, 28:23, 30:1, 30:9, 30:15, 30:19, 31:1, 33:2, 33:9, 38:11, 38:16, 38:25, 39:8, 39:13, 39:16, 39:18, 40:21, 41:7, 42:9, 42:17, 42:22, 43:1, 43:10, 44:7, 44:15, 45:1, 45:4, 45:12, 45:14, 46:2, 46:25, 47:21, 49:17, 50:25 Brownell [1] - 16:17 burden [2] - 29:7, 44:5 burdened [1] - 49:13 bureaucratic [1] - 13:23 burns [1] - 13:22 Burton [1] - 3:7 BY [3] - 1:16, 33:9, 39:18</p> <hr/> <p style="text-align: center;">C</p> <p>Cacciopoli [7] - 26:17, 27:2, 27:4, 37:21, 37:22, 38:4, 40:4 Cadman [2] - 1:17, 3:7 calendar [1] - 46:12 Cali [3] - 2:16, 5:23, 27:23 Cali's [1] - 4:11 Calvo [1] - 28:21 CAMPBELL [1] - 1:15 capacity [1] - 32:6 captain [1] - 37:23 case [24] - 11:24, 13:11, 13:13, 14:10, 14:17, 15:5, 15:7, 16:3, 17:25, 29:22, 30:4, 36:17, 43:11, 43:14, 43:24, 44:19, 44:24, 46:22, 46:24, 48:11, 48:19, 49:3 cases [12] - 9:8, 14:5, 14:11, 14:12, 14:19, 14:20, 14:23, 17:12, 22:6, 29:2, 49:14 cash [2] - 37:2, 37:5 Cash [1] - 37:6 Cassarino [10] - 2:6, 6:4, 7:25, 8:10, 16:16, 16:20, 18:22, 18:23, 26:17, 27:23 Cassarino's [1] - 16:18 categories [2] - 22:6, 22:9 category [13] - 16:13, 18:1, 18:5, 18:9, 18:15, 18:18, 19:2, 19:3, 20:16, 20:22, 27:17, 29:22, 30:10 Cefalu [2] - 27:4, 27:6 Cement [12] - 22:19, 22:21, 22:22, 22:23, 22:24, 23:5, 23:11, 23:20, 23:22, 23:23, 26:15, 27:1 cement [2] - 27:12, 35:3 certain [2] - 7:7, 13:13 certainly [5] - 11:16, 15:24, 42:10, 43:18, 44:5 Certainly [1] - 16:4 challenge [1] - 14:7 changes [1] - 47:14 chart [1] - 21:7 check [6] - 18:9, 20:15, 20:17, 37:3, 37:5, 37:6 checklist [1] - 13:5 </p>
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<p>Chirico [3] - 28:7, 29:18, 30:9 Circuit [1] - 13:6 circuit [2] - 13:7, 14:5 circumstances [1] - 48:7 Civil [1] - 13:9 civil [1] - 13:11 claim [8] - 9:6, 14:7, 15:6, 21:8, 30:6, 30:7, 30:8, 31:22 claims [2] - 15:14, 29:5 clause [1] - 38:13 clean [2] - 5:10, 45:24 clear [1] - 15:21 CLERK [2] - 31:9, 31:14 client [5] - 10:9, 13:14, 29:23, 32:15, 32:19 client's [1] - 9:18 cocaine [1] - 34:13 coconspirators [2] - 41:15, 44:18 cocounsel [2] - 32:12, 44:12 collected [3] - 10:25, 13:14, 35:12 collective [2] - 33:24, 34:1 committed [1] - 11:8 common [1] - 16:3 community [1] - 16:4 companies [6] - 35:1, 35:2, 37:9, 37:12, 37:17, 38:4 Company [4] - 22:19, 22:21, 22:22, 23:22 company [10] - 33:24, 34:4, 35:3, 37:7, 37:10, 37:11, 37:25, 38:3, 40:5 compensating [1] - 10:21 compensation [1] - 39:7 complete [1] - 14:3 completely [1] - 44:9 computer [1] - 3:10 computer-aided [1] - 3:10 concerned [1] - 50:15 concession [1] - 42:12 concluded [1] - 51:6 conduct [2] - 13:16, 46:13 conducts [1] - 14:2 confirm [2] - 35:25, 36:4 conflict [1] - 6:7 confrontation [1] - 38:13 connection [1] - 13:9 consensually [1] - 40:23 consent [4] - 7:2, 8:12, 9:6, 49:22 consider [1] - 50:12 consideration [1] - 48:17 conspiracy [6] - 10:15, 41:10, 41:12, 41:16, 42:3, 42:5 constitutes [1] - 29:4 constitutional [1] - 41:6 consult [1] - 44:12 contact [1] - 50:9 contest [1] - 44:10 context [2] - 41:3, 41:14 continuance [3] - 45:13, 45:15, 50:15 Continued [3] - 24:9, 30:24, 46:25 CONTINUES [1] - 39:17 </p>	<p>control [3] - 37:17, 39:20, 38:4 convenes [1] - 51:4 conversation [2] - 38:7, 41:3 conversations [12] - 34:19, 35:13, 36:7, 39:1, 39:4, 39:20, 39:25, 40:2, 40:9, 40:24, 44:19, 45:20 cooperate [1] - 34:15 cooperating [3] - 36:1, 41:9, 42:5 cooperation [4] - 34:18, 35:4, 36:13, 39:21 cooperator [1] - 40:16 copy [3] - 5:9, 5:10, 23:17 Corozzo [15] - 2:5, 3:4, 4:16, 6:5, 18:8, 18:11, 18:21, 25:7, 25:23, 26:18, 27:8, 27:13, 27:18, 27:24, 28:8 correct [12] - 7:5, 21:3, 21:6, 22:8, 22:12, 25:2, 25:17, 33:2, 41:4, 46:2, 46:8, 47:21 Correct [8] - 19:13, 23:19, 23:21, 24:6, 41:24, 42:7, 42:15, 42:16 corrected [2] - 15:2, 47:11 corruption [1] - 33:15 counsel [8] - 42:12, 42:21, 42:23, 43:2, 46:19, 47:5, 49:2, 49:3 count [2] - 9:3, 17:10 counts [2] - 41:1, 46:23 couple [2] - 33:17, 45:17 course [11] - 6:19, 11:2, 15:12, 33:13, 35:4, 36:5, 36:13, 39:21, 40:2, 40:24, 41:12 court [4] - 5:5, 9:10, 14:2, 43:13 COURT [1] - 1:1 Court [2] - 3:7, 39:5 court's [3] - 3:25, 4:25, 16:2 Courthouse [1] - 1:7 courtroom [2] - 22:2, 51:3 courts [1] - 48:25 covers [1] - 20:20 CR [1] - 1:4 Crawford [1] - 38:7 credibility [1] - 32:13 credit [1] - 15:7 Crime [2] - 37:23, 43:15 crime [8] - 10:19, 11:7, 34:20, 36:15, 37:17, 43:14, 45:20 crimes's [1] - 33:16 criminal [2] - 34:21, 39:10 critical [1] - 20:10 critically [1] - 15:11 criticizing [1] - 45:9 cross [4] - 40:17, 40:20, 43:8, 46:7 cross-examination [2] - 40:17, 46:7 cross-examine [2] - 40:20, 43:8 </p>	<p>D</p> <p>D'Amico [3] - 2:10, 4:9, 27:9 DANIEL [1] - 1:16 date [5] - 6:17, 12:6, 12:8, 50:20, 51:6 dated [6] - 3:25, 4:2, 5:12, 5:22, 5:24, 6:15 Dauria [3] - 11:8, 19:21, 20:3 days [8] - 11:13, 12:6, 12:9, 14:14, 14:16, 14:18, 30:1, 30:2 deal [1] - 21:2 dealing [2] - 44:10, 45:10 decide [3] - 16:24, 44:12, 46:13 decided [1] - 47:13 decides [1] - 47:16 deciding [1] - 48:16 deepest [1] - 9:22 defendant [18] - 4:3, 4:6, 4:9, 4:22, 7:6, 7:7, 7:14, 8:9, 9:11, 14:2, 14:6, 17:7, 19:20, 19:21, 19:22, 20:2, 20:11 defendant's [1] - 44:1 Defendants [2] - 1:9, 1:19 defendants [21] - 8:3, 8:4, 8:12, 8:14, 8:25, 10:14, 16:13, 19:15, 25:4, 25:6, 26:6, 27:13, 28:20, 30:10, 44:10, 45:11, 46:8, 47:3, 48:20, 49:4, 49:22 defendants' [1] - 48:19 defense [2] - 46:19, 49:3 deficit [2] - 48:24, 48:25 demand [1] - 7:13 DeMarco [4] - 3:1, 7:23, 31:20 DeMaria [9] - 25:7, 25:23, 26:18, 27:9, 27:14, 27:18, 27:24, 28:10, 38:10 denied [4] - 7:4, 7:9, 9:6, 10:2 deny [3] - 17:24, 49:20, 49:21 Department [1] - 33:11 Department's [1] - 6:20 designation [1] - 48:1 detail [1] - 36:25 detailed [2] - 15:14, 36:23 determination [3] - 12:9, 29:25, 48:4 developed [3] - 13:5, 13:23 device [1] - 34:22 devote [1] - 49:16 DIAMUID [1] - 3:4 DiBENEDETTO [1] - 2:22 different [4] - 16:17, 35:25, 38:17, 49:1 DiMaria [5] - 2:8, 5:7, 7:8, 9:2, 9:5 DIRECT [1] - 33:8 directly [1] - 47:19 discovers [1] - 12:17 discussed [1] - 29:23 discussing [1] - 40:4 discussions [2] - 40:3, 49:8 disks [1] - 42:18 dismissed [1] - 31:22 dispose [1] - 47:1 distinguished [1] - 47:5 district [1] - 13:7 District [1] - 49:15 DISTRICT [2] - 1:1, 1:1 doctrine [1] - 45:24 documentation [1] - 6:21 documents [1] - 6:1 Doe [2] - 10:16, 10:19 dollars [2] - 20:1, 49:15 </p>
---	--	---

<p>Domenico [2] - 27:4, 27:5 done [3] - 18:4, 46:9, 51:1 Doria [2] - 10:15, 10:17 double [1] - 31:4 doubled [1] - 20:4 doubles [1] - 20:5 downloaded [1] - 36:11 downstairs [1] - 22:3 Dragonetti [13] - 2:21, 4:22, 6:10, 17:1, 17:4, 18:20, 25:10, 25:24, 26:19, 27:14, 27:20, 28:2, 28:10 due [3] - 15:3, 38:22, 46:23 Dump [1] - 37:11 During [4] - 33:13, 35:4, 36:13, 40:2 during [7] - 35:7, 36:5, 36:7, 39:20, 40:24, 41:12, 43:15</p>	<p>examine [2] - 40:20, 45:8 Excavation [6] - 22:25, 23:1, 23:4, 23:24, 23:25, 27:17 exceed [2] - 11:21, 12:9 except [1] - 38:25 exception [1] - 14:21 excessive [1] - 46:23 Excuse [3] - 9:17, 10:6, 15:3 excused [8] - 14:8, 31:22, 32:3, 32:6, 32:8, 32:10, 33:1, 33:3 exempt [1] - 18:17 exemption [1] - 18:25 exercise [1] - 40:19 exhibits [3] - 31:1, 31:3, 31:4 expect [2] - 20:18, 47:19 expert [1] - 11:16 experts [1] - 39:10 explore [3] - 49:24, 50:4, 50:22 exposed [1] - 32:20 exposure [1] - 9:3 extant [1] - 30:6 extend [1] - 14:15 extensive [3] - 13:4, 13:20, 14:1 extent [2] - 7:7, 9:2 extortions [1] - 36:16</p>	<p>follow [1] - 19:1 forget [1] - 22:15 forms [1] - 37:4 forward [6] - 15:10, 19:17, 21:16, 46:18, 49:7, 49:18 four [1] - 43:16 fourth [1] - 20:22 Frank [3] - 4:11, 5:23, 27:23 frankly [1] - 15:21 Frankly [1] - 14:22 FRANZ [2] - 2:24, 50:17 fraud [3] - 10:15, 10:18, 12:2 frauds [1] - 49:14 free [3] - 39:15, 42:1, 45:4 Friday [1] - 21:21 FROCCARO [7] - 1:19, 7:17, 8:17, 9:14, 9:18, 9:21, 9:23 Froccaro [1] - 7:17 front [1] - 12:24 full [2] - 10:24, 31:15 fully [3] - 10:21, 29:4, 41:17 fund [9] - 19:8, 46:1, 47:7, 47:13, 47:14, 47:19, 47:22, 48:22, 49:1 Fund [1] - 15:22 furtherance [3] - 41:11, 41:16, 42:3 future [1] - 46:20</p>
<p>E</p> <p>East [2] - 1:17, 3:7 Eastern [1] - 49:14 EASTERN [1] - 1:1 ECF [1] - 21:6 effect [4] - 9:9, 38:23, 39:6, 45:24 Eight [1] - 25:20 eight [1] - 31:3 either [1] - 39:3 eleven [2] - 31:2, 31:3 elicit [2] - 44:16 ELIZABETH [1] - 2:9 Ellen [1] - 5:25 ELLEN [1] - 1:25 employees [2] - 34:3, 34:5 end [1] - 35:5 enforcement [4] - 34:22, 35:12, 35:19, 35:24 enormous [1] - 47:3 ensure [1] - 35:20 entirely [1] - 49:1 entitled [3] - 14:2, 14:7, 44:23 Epifania [4] - 1:20, 5:3, 25:14, 26:19 ERIC [1] - 2:24 Ernest [2] - 5:15, 26:19 especially [4] - 38:19, 40:3, 43:15 ESQ [21] - 1:19, 1:21, 1:23, 1:25, 2:1, 2:3, 2:5, 2:7, 2:9, 2:11, 2:13, 2:15, 2:17, 2:19, 2:20, 2:22, 2:24, 3:1, 3:2, 3:4, 3:5 essentially [2] - 41:22, 45:6 establish [1] - 14:14 estimate [1] - 50:6 et [1] - 1:8 evidence [2] - 32:1, 42:9 Evidence [2] - 44:20, 44:21 evidentiary [1] - 38:16 exact [1] - 17:16 Exactly [2] - 30:14, 30:19 exaggerate [1] - 38:22 examination [4] - 13:16, 31:21, 40:17, 46:7 EXAMINATION [2] - 33:8, 39:17</p>	<p>facilitated [1] - 10:18 fact [8] - 10:23, 13:17, 14:16, 17:20, 35:8, 35:20, 47:11, 49:6 factor [1] - 48:15 failure [2] - 10:16, 15:10 fairly [1] - 11:6 fall [2] - 16:13, 18:8 familiar [1] - 15:22 Family [3] - 37:23, 40:4, 43:15 far [1] - 32:17 fascinating [1] - 49:14 fashion [3] - 21:13, 35:23, 38:2 February [23] - 1:9, 4:4, 4:5, 4:7, 4:8, 4:10, 4:11, 4:13, 4:14, 4:15, 4:16, 4:17, 4:19, 4:21, 4:23, 4:24, 4:25, 5:1, 5:2, 5:3, 6:22, 10:23, 39:21 fees [1] - 13:14 fell [1] - 29:20 few [2] - 8:16, 29:11 figures [2] - 36:16, 37:18 file [1] - 5:10 Filippelli [7] - 1:25, 4:6, 6:1, 8:4, 9:12, 18:16, 32:5 final [1] - 12:8 finality [1] - 13:2 fine [1] - 45:7 Fines [1] - 48:23 fines [2] - 10:20, 48:20 first [7] - 8:24, 23:7, 26:5, 29:7, 29:22, 48:3, 48:9 First [2] - 23:9, 37:7 five [1] - 23:3</p>	<p>F</p> <p>Gambino [3] - 37:23, 40:4, 43:15 general [3] - 14:12, 33:13, 48:24 General's [1] - 33:11 generally [1] - 38:21 Gerald [1] - 5:11 GERALD [1] - 1:23 GILBERT [16] - 3:2, 5:21, 14:4, 14:22, 15:13, 16:9, 19:6, 19:8, 19:10, 19:13, 19:16, 19:19, 20:6, 20:12, 20:17, 20:19 Gilbert [2] - 5:21, 14:4 GINSBERG [3] - 2:1, 32:22, 33:4 given [9] - 11:7, 17:16, 34:22, 36:23, 43:14, 45:6, 46:14, 47:17, 48:17 Given [1] - 43:13 Gotti [14] - 2:19, 3:1, 4:17, 4:20, 7:23, 9:25, 17:15, 17:17, 18:7, 18:17, 18:20, 31:22, 32:1 Gotti's [2] - 4:18, 17:15 Gotti. [1] - 7:24 Gottis [1] - 8:5 government [38] - 4:5, 5:1, 7:2, 8:6, 9:7, 10:1, 10:10, 10:13, 10:22, 11:2, 11:20, 11:22, 12:7, 14:25, 15:7, 15:20, 16:11, 17:6, 17:22, 19:1, 21:19, 29:6, 29:16, 30:7, 31:20, 32:23, 33:6, 34:15, 34:18, 36:14, 43:10, 43:18, 47:11, 49:2, 49:6, 49:9, 49:13, 49:23 Government [2] - 1:15, 48:21 government's [5] - 7:3, 8:1, 8:7, 8:23, 38:15 gracious [1] - 47:12</p>
		<p>G</p>

<p>grand [1] - 22:3 granted [1] - 19:1 great [8] - 15:8, 39:10, 46:13, 46:18, 46:19, 48:24, 49:3, 51:5 Grillo [4] - 2:17, 5:15, 5:17, 26:19 ground [1] - 10:3 group [4] - 7:10, 7:16, 9:8, 50:22 guess [1] - 21:20 guilty [1] - 10:15</p>	<p>imposed [2] - 11:11, 19:25 impression [1] - 8:15 impressions [1] - 47:10 improper [1] - 41:25 incarcerated [1] - 9:21 inclined [1] - 48:13 included [1] - 21:22 income [1] - 20:4 incorrectly [1] - 15:1 indicate [1] - 22:1 indicated [6] - 6:19, 8:6, 20:7, 32:24, 32:25, 49:25 indicates [1] - 11:20 indicating [4] - 3:20, 7:14, 18:5, 45:16 indication [4] - 7:12, 10:10, 11:12, 12:24 individual [1] - 33:19 individually [1] - 46:15 individuals [1] - 35:9 inform [2] - 12:7, 12:11 informant [1] - 41:1 informant's [1] - 41:2 information [1] - 37:24 informed [1] - 10:23 initial [3] - 21:8, 45:22, 47:10 Inspector [1] - 33:11 instance [2] - 8:9, 48:3 instead [2] - 13:19, 43:5 instruct [1] - 40:25 intend [1] - 50:3 interested [1] - 43:18 International [4] - 19:10, 19:12, 20:21, 33:25 investigation [7] - 33:18, 33:21, 34:7, 35:12, 36:6, 40:24, 45:7 investigations [1] - 33:14 Investigations [1] - 33:15 invited [1] - 41:19 involve [1] - 7:6 involved [10] - 15:19, 15:24, 33:14, 33:18, 34:6, 34:21, 34:25, 35:12, 43:19, 45:21 involvement [1] - 33:16 involving [7] - 33:18, 36:16, 43:16, 44:19, 45:2, 49:14, 49:15 Island [10] - 22:19, 22:21, 22:22, 23:5, 23:11, 23:20, 23:22, 26:15, 27:1, 33:24 issue [13] - 3:22, 7:15, 7:18, 7:20, 7:22, 11:12, 17:22, 18:3, 18:23, 21:18, 48:10, 50:1, 50:7 issues [1] - 21:13 itself [1] - 49:13</p>	<p>JD [1] - 11:4 Jeremy [1] - 5:15 JEREMY [1] - 2:17 Jerry [1] - 28:7 Joe [4] - 35:14, 36:1, 36:4, 36:22 John [4] - 4:9, 10:16, 10:19, 27:9 join [2] - 32:11, 38:9 joint [1] - 20:7 jointly [2] - 25:16, 46:15 Jonathan [2] - 31:16, 31:19 JOSEPH [3] - 1:8, 2:3, 2:22 Joseph [22] - 4:15, 6:5, 7:19, 9:1, 10:4, 10:7, 11:4, 18:8, 18:11, 18:20, 18:21, 20:9, 25:12, 26:18, 27:8, 28:7, 29:18, 29:19, 33:19, 33:23, 37:15, 40:3 Judge [34] - 7:20, 8:3, 9:21, 11:16, 12:22, 18:6, 19:24, 21:3, 21:18, 22:8, 22:12, 23:8, 23:16, 25:2, 29:8, 30:3, 30:9, 30:20, 30:22, 31:6, 33:2, 38:11, 38:16, 38:25, 39:8, 40:21, 40:25, 42:17, 43:10, 45:1, 45:4, 45:14, 46:13, 50:5 JUDGE [1] - 1:12 judge [3] - 29:21, 47:8, 50:23 judges [1] - 13:7 judgment [3] - 14:3, 17:9, 32:14 Junior [1] - 9:13 juries [1] - 40:25 jury [1] - 22:4</p>
<p>half [1] - 34:13 hand [1] - 11:17 handled [1] - 15:8 hands [1] - 45:24 happy [2] - 14:23, 50:12 Harbor [3] - 22:15, 23:13, 23:18 hard [1] - 50:21 HARLAN [1] - 2:15 Harlan [1] - 5:23 hate [1] - 49:20 head [1] - 14:23 heading [1] - 26:3 hear [3] - 9:16, 19:17, 33:6 heard [1] - 22:3 hearing [10] - 4:1, 8:11, 30:13, 38:12, 38:17, 38:19, 45:21, 46:6, 47:15, 50:24 HEARING [1] - 1:11 hearings [1] - 46:13 hearsay [5] - 38:12, 38:18, 41:5, 41:7, 44:4 heavy [1] - 46:12 help [1] - 47:8 HENRY [1] - 2:20 Henry [2] - 6:9, 16:25 hiatus [1] - 50:8 historical [2] - 13:8, 13:17 history [2] - 37:25, 40:5 holder [1] - 6:21 holding [1] - 21:25 honestly [1] - 39:8 Honor [31] - 6:8, 8:18, 9:23, 9:25, 10:5, 10:22, 15:13, 16:9, 17:9, 17:15, 18:22, 19:6, 19:20, 20:3, 20:6, 25:17, 28:14, 29:19, 30:6, 31:20, 31:24, 32:9, 32:17, 32:21, 32:22, 38:6, 40:17, 40:18, 44:15, 48:18, 48:20 HONORABLE [1] - 1:12 hours [1] - 34:14 huge [2] - 13:23, 15:7 hundred [3] - 25:20, 39:23, 45:19 hundreds [2] - 39:20, 49:15</p>	<p>initial [3] - 21:8, 45:22, 47:10 Inspector [1] - 33:11 instance [2] - 8:9, 48:3 instead [2] - 13:19, 43:5 instruct [1] - 40:25 intend [1] - 50:3 interested [1] - 43:18 International [4] - 19:10, 19:12, 20:21, 33:25 investigation [7] - 33:18, 33:21, 34:7, 35:12, 36:6, 40:24, 45:7 investigations [1] - 33:14 Investigations [1] - 33:15 invited [1] - 41:19 involve [1] - 7:6 involved [10] - 15:19, 15:24, 33:14, 33:18, 34:6, 34:21, 34:25, 35:12, 43:19, 45:21 involvement [1] - 33:16 involving [7] - 33:18, 36:16, 43:16, 44:19, 45:2, 49:14, 49:15 Island [10] - 22:19, 22:21, 22:22, 23:5, 23:11, 23:20, 23:22, 26:15, 27:1, 33:24 issue [13] - 3:22, 7:15, 7:18, 7:20, 7:22, 11:12, 17:22, 18:3, 18:23, 21:18, 48:10, 50:1, 50:7 issues [1] - 21:13 itself [1] - 49:13</p>	<p>KEDIA [9] - 2:5, 6:3, 6:8, 7:25, 16:16, 18:8, 18:12, 18:22, 49:25 Kedia [3] - 6:3, 7:25, 16:16 keep [1] - 13:22 Kellman [2] - 5:13, 21:24 KELLMAN [9] - 2:7, 5:6, 5:9, 9:2, 22:1, 38:9, 43:8, 44:3, 46:10 Kilgannon [4] - 24:3, 28:13, 28:14 Kilgannon-Polakoff [2] - 28:13, 28:14 kilogram [1] - 34:13 kind [1] - 33:14 King [5] - 1:22, 4:2, 6:13, 28:21, 28:23 knowledge [1] - 16:3 known [2] - 20:22, 36:15 knows [2] - 13:3, 28:14</p>
<p>I</p>	<p>J</p>	<p>L</p>
<p>imagine [1] - 42:12 implies [1] - 12:17 impose [1] - 12:21</p>	<p>JACK [1] - 1:12 James [1] - 7:17 JAMES [1] - 1:19 January [1] - 4:1, 4:2, 34:9, 35:5, 35:6, 36:14, 37:8, 37:16, 39:2, 39:22</p>	<p>Labor [1] - 33:11 labor [1] - 33:16 large [1] - 50:22 Last [1] - 24:8 last [5] - 6:2, 6:13, 26:9, 26:22, 43:16 lastly [1] - 28:17 laundering [1] - 17:10 law [7] - 34:22, 35:11, 35:19, 35:24, 38:21, 39:11, 43:11 lawyer [1] - 21:19</p>

<p>lawyers [2] - 13:10, 21:22 learn [1] - 41:23 learned [2] - 13:10, 42:12 learns [1] - 11:21 least [4] - 36:14, 47:5, 49:4, 51:2 leave [3] - 35:15, 35:17 length [1] - 46:13 lengths [1] - 49:3 lengthy [1] - 11:6 Leonard [12] - 5:7, 7:7, 9:2, 9:5, 25:7, 25:23, 26:18, 27:9, 27:14, 27:18, 27:24, 28:10 less [1] - 44:6 Letter [9] - 4:6, 4:8, 4:14, 4:15, 4:16, 4:17, 4:24, 5:2, 5:3 letter [14] - 4:20, 4:22, 5:6, 5:11, 5:22, 5:24, 6:3, 6:22, 7:1, 8:18, 17:24, 18:2, 18:10, 31:3 letters [3] - 5:19, 6:10, 50:1 Levy [1] - 50:5 Liberty [6] - 22:15, 22:16, 23:13, 23:14, 23:18, 25:22 light [1] - 49:6 list [1] - 22:14 listed [1] - 18:13 listen [4] - 36:6, 36:9, 39:24, 44:24 listening [5] - 40:9, 40:13, 40:14, 40:23, 41:23 literally [1] - 39:20 Local [22] - 3:3, 4:24, 5:21, 6:22, 7:3, 8:24, 9:6, 9:7, 10:14, 10:21, 11:1, 11:5, 11:8, 11:25, 14:4, 19:4, 19:6, 19:8, 19:9, 20:20, 21:8, 33:25 location [3] - 35:15, 35:16, 35:17 look [2] - 21:9, 46:18 looking [1] - 49:18 loosened [1] - 44:4 loss [3] - 11:7, 12:1, 15:5 losses [9] - 10:21, 11:21, 12:5, 12:9, 12:12, 12:17, 12:18, 12:19, 12:24 Louis [8] - 4:6, 4:8, 5:25, 9:1, 9:12, 18:16, 26:19, 32:5 love [1] - 43:8 Lowe [1] - 50:9</p>	<p>Masters [1] - 37:11 material [3] - 21:20, 21:21, 21:23 materials [1] - 15:14 matter [4] - 29:3, 36:17, 49:9, 51:6 matters [2] - 13:8, 22:4 MAZUREK [9] - 2:20, 6:9, 16:25, 17:4, 47:10, 47:24, 48:3, 48:8, 48:18 Mazurek [2] - 6:9, 16:25 mean [1] - 15:23 means [1] - 43:23 measures [1] - 35:19 mechanical [1] - 3:10 meet [5] - 29:7, 35:14, 35:16, 36:24, 37:1 meeting [2] - 6:2, 35:25 Mellone [6] - 21:11, 31:16, 31:19, 33:10, 39:19, 49:17 member [1] - 42:5 members [9] - 34:20, 35:11, 35:19, 36:19, 40:4, 41:10, 41:11, 43:17, 45:20 memorandum [3] - 3:25, 4:2, 10:13 Memorandum [2] - 4:5, 5:1 mentioned [8] - 6:12, 16:14, 16:18, 17:19, 17:20, 17:21, 18:14, 35:8 met [1] - 36:25 method [2] - 46:16, 46:17 methods [1] - 13:19 MICHAEL [1] - 3:2 Michael [6] - 4:2, 5:21, 6:13, 14:4, 28:21, 28:22 microphone [1] - 19:18 might [3] - 6:13, 49:8, 51:1 Might [1] - 50:25 million [1] - 20:1 mind [4] - 3:18, 13:8, 13:17, 39:3 mine [1] - 20:14 minus [1] - 21:8 minute [1] - 25:8 minutes [3] - 18:9, 29:9, 29:11 misheard [1] - 29:21 Miss [4] - 5:13, 11:8, 20:3, 21:24 mistake [1] - 13:12 mistakes [1] - 13:12 mobs [1] - 16:6 moment [4] - 25:25, 27:19, 27:25, 28:18 money [6] - 17:10, 44:10, 45:10, 45:25, 47:7, 47:16 month [1] - 20:2 months [4] - 43:2, 46:6, 46:20, 47:4 morning [2] - 21:7, 36:23 Mosca [4] - 4:8, 7:6, 9:1 most [5] - 13:6, 21:7, 30:10, 43:16, 45:19 motion [2] - 17:24, 50:14 MR [189] - 5:11, 5:15, 5:21, 5:23, 6:9, 6:11, 6:16, 6:24, 7:1, 7:5, 7:17, 7:19, 7:21, 7:23, 7:24, 8:3, 8:17, 8:19, 9:1, 9:4, 9:12, 9:14, 9:15, 9:18, 9:21, 9:23, 9:25, 10:4, 10:7, 10:9, 10:22, 11:16, 11:20, 12:13, 12:22, 14:4, 14:22, 15:13,</p>	<p>16:9, 16:21, 16:25, 17:4, 17:7, 17:13, 17:14, 17:18, 17:20, 18:2, 18:6, 18:13, 19:6, 19:8, 19:10, 19:13, 19:16, 19:19, 19:24, 20:3, 20:6, 20:12, 20:17, 20:19, 20:24, 21:3, 21:6, 21:11, 21:15, 21:18, 22:8, 22:10, 22:12, 22:14, 22:17, 22:19, 22:21, 22:23, 22:25, 23:2, 23:4, 23:7, 23:10, 23:12, 23:16, 23:19, 23:21, 23:24, 24:1, 24:3, 24:6, 24:8, 25:2, 25:6, 25:10, 25:12, 25:14, 25:17, 25:20, 25:23, 26:2, 26:5, 26:8, 26:10, 26:12, 26:14, 26:23, 26:25, 27:2, 27:4, 27:6, 27:8, 27:11, 27:13, 27:17, 27:20, 27:23, 28:2, 28:5, 28:7, 28:10, 28:13, 28:20, 28:23, 29:8, 29:18, 30:1, 30:2, 30:9, 30:14, 30:15, 30:19, 30:20, 30:22, 31:1, 31:20, 31:24, 32:4, 32:22, 33:2, 33:4, 33:9, 38:6, 38:11, 38:13, 38:16, 38:25, 39:8, 39:12, 39:13, 39:16, 39:18, 40:12, 40:21, 40:25, 41:5, 41:7, 41:17, 41:22, 41:25, 42:9, 42:16, 42:17, 42:22, 43:1, 43:3, 43:10, 44:2, 44:7, 44:15, 44:21, 45:1, 45:4, 45:12, 45:14, 46:2, 46:9, 46:25, 47:10, 47:21, 47:24, 48:3, 48:8, 48:18, 49:2, 49:17, 50:8, 50:13, 50:17, 50:25 MS [24] - 5:6, 5:9, 5:18, 5:25, 6:3, 6:8, 7:25, 9:2, 16:16, 18:8, 18:12, 18:22, 22:1, 29:12, 32:5, 32:9, 32:16, 32:21, 38:9, 43:8, 44:3, 46:10, 49:11, 49:25 murderous [1] - 43:17</p>
<p style="text-align: center;">M</p> <p>MACEDONIO [3] - 2:9, 29:12, 49:11 Magistrate [1] - 46:12 magistrate [2] - 47:8, 50:23 mail [1] - 10:15 main [1] - 7:11 March [1] - 50:15 Margaret [1] - 5:18 MARGARET [1] - 2:13 Mario [8] - 6:4, 7:25, 8:9, 16:16, 18:22, 18:23, 26:17, 27:23 Mark [4] - 6:11, 7:23, 7:24, 17:14 MARK [3] - 1:21, 2:19, 3:1 markets [1] - 33:16</p>	<p>motion [2] - 17:24, 50:14 MR [189] - 5:11, 5:15, 5:21, 5:23, 6:9, 6:11, 6:16, 6:24, 7:1, 7:5, 7:17, 7:19, 7:21, 7:23, 7:24, 8:3, 8:17, 8:19, 9:1, 9:4, 9:12, 9:14, 9:15, 9:18, 9:21, 9:23, 9:25, 10:4, 10:7, 10:9, 10:22, 11:16, 11:20, 12:13, 12:22, 14:4, 14:22, 15:13,</p>	<p style="text-align: center;">N</p> <p>name [7] - 3:18, 9:18, 26:22, 31:15, 31:18, 37:9, 37:14 named [1] - 33:19 names [1] - 37:9 Nascar [4] - 24:1, 24:2, 27:22, 27:23 nature [5] - 33:21, 34:17, 38:8, 43:13, 43:14 naval [1] - 13:23 Navy [2] - 13:18 navy [1] - 13:19 necessary [1] - 43:12 necessity [1] - 50:10 need [2] - 45:14, 45:19 negotiation [1] - 48:14 negotiations [1] - 48:17 nerve [1] - 29:14 NEW [1] - 1:1 New [3] - 1:7, 1:18, 3:8 Newsday [2] - 46:21, 46:22 newspapers [1] - 46:24 next [5] - 23:24, 24:9, 27:17, 30:24, 46:25 nice [1] - 3:15 Nicholas [10] - 4:16, 25:7, 25:23, 26:18, 27:8, 27:13, 27:18, 27:24, 28:8, 28:21 nine [3] - 31:3, 39:23, 45:19</p>

nonunion [2] - 34:5, 37:11 nothing [1] - 31:11 notices [1] - 15:23 notification [1] - 15:20 November [2] - 5:19, 5:20 nowhere [1] - 17:5 number [3] - 13:13, 21:5, 42:18	packages [1] - 21:20 page [3] - 24:9, 30:24, 46:25 paid [4] - 20:2, 25:16, 28:15, 34:4 paper [1] - 21:23 papers [3] - 3:20, 3:21, 48:10 parenthetically [1] - 15:8 PARROTTA [6] - 7:19, 10:4, 10:7, 10:9, 18:13, 19:24 Parrotta [3] - 7:19, 10:4, 10:7 participated [2] - 12:2, 13:4 participation [1] - 45:24 particular [8] - 10:1, 11:24, 21:13, 37:25, 40:9, 43:14, 44:19, 45:21 particularly [3] - 13:18, 14:8, 47:6 parties [2] - 8:2, 10:14 partly [1] - 44:11 partner [2] - 37:12, 37:14 parts [1] - 22:17 party [3] - 40:14, 41:2 Patrick [3] - 7:19, 10:4, 10:7 Pause [2] - 29:15, 44:14 pay [4] - 10:16, 10:18, 13:14, 34:2 payments [4] - 36:15, 36:20, 36:21, 37:2 payoff [3] - 24:4, 28:13, 32:11 Payoff [1] - 24:5 penalty [1] - 31:11 pending [1] - 44:24 people [7] - 3:19, 17:25, 21:10, 33:19, 36:16, 41:8, 51:1 period [6] - 11:22, 11:23, 14:8, 30:15, 35:7, 36:7 perjury [1] - 31:12 person [4] - 38:21, 38:22, 38:23, 47:25 phone [1] - 3:16 piece [1] - 21:23 place [2] - 39:1, 48:9 plans [1] - 36:23 play [1] - 43:4 played [1] - 43:6 Plaza [2] - 1:17, 3:7 pleasure [5] - 46:18, 46:19, 49:20, 49:21, 51:5 pled [2] - 10:15, 17:10 point [2] - 13:1, 48:24 points [1] - 7:11 Polakoff [5] - 2:12, 24:4, 28:13, 28:14, 32:11 portions [1] - 43:5 position [4] - 14:11, 46:4, 48:12, 48:13 possession [1] - 34:12 possible [2] - 6:6, 48:15 powder [5] - 13:22, 22:23, 22:24, 23:23, 27:12 Practice [1] - 13:9 practice [1] - 13:11 prejudice [1] - 14:6 prepared [2] - 32:17, 45:8 preparing [1] - 4:1 preponderance [1] - 44:7	presence [2] - 4:11, 4:12 present [5] - 3:17, 3:19, 7:16, 29:1, 43:24 presentence [3] - 6:20, 7:13, 12:23 presenting [1] - 31:25 pressures [1] - 38:24 presume [1] - 31:6 probation [1] - 12:7 Probation [1] - 6:20 problem [1] - 8:21 proceed [4] - 21:10, 29:6, 29:7, 39:15 proceeded [1] - 9:9 proceeding [1] - 14:1 proceedings [2] - 15:20, 50:10 Proceedings [1] - 3:10 proceeds [1] - 31:21 process [1] - 15:23 produced [1] - 3:10 profits [4] - 22:19, 23:6, 23:20, 26:15 proof [2] - 44:5, 44:9 propulsion [1] - 13:20 prosecutor [1] - 9:10 prosecutor's [1] - 9:11 Protacs [1] - 5:23 PROTACS [2] - 2:15, 5:23 protect [1] - 15:10 Protection [1] - 43:20 proves [1] - 19:1 provides [1] - 17:9 providing [1] - 44:9 publicized [1] - 29:4 punishment [1] - 39:6 punitive [1] - 44:11 purpose [2] - 41:2, 41:10 purposes [1] - 32:11 put [10] - 16:24, 29:24, 39:15, 41:3, 41:14, 42:8, 42:9, 42:10, 43:6, 45:15
O	old [1] - 13:9 once [2] - 35:14, 47:16 one [17] - 6:12, 6:14, 8:4, 8:5, 13:24, 16:7, 16:10, 18:19, 19:3, 20:1, 21:1, 21:18, 22:11, 23:5, 40:15, 43:16, 46:16 One [2] - 45:22, 46:11 operating [1] - 33:23 opinion [1] - 18:1 opponents [1] - 40:15 opportunity [2] - 39:24, 47:2 ORDEN [2] - 2:17, 5:15 Orden [1] - 5:15 order [4] - 3:25, 4:25, 8:12, 30:11 ordered [5] - 11:12, 19:20, 19:23, 47:25, 48:20 organized [7] - 33:15, 34:19, 34:20, 36:15, 37:17, 43:14, 45:20 ought [1] - 7:10 outline [1] - 36:23 outlining [3] - 11:6, 12:1, 15:14 outset [1] - 48:13 outstanding [1] - 30:7 overbilling [1] - 46:23 overcharging [1] - 46:22	Q
P	p.m [1] - 1:9 Pacelli [4] - 2:14, 5:18, 26:20, 26:23 Pacelli's [1] - 4:12	quality [1] - 46:18 quashed [1] - 40:18 questions [1] - 40:8 quickly [1] - 31:6 quite [1] - 21:24
		R

<p>reasons [1] - 7:1 receive [3] - 15:19, 16:7, 21:23 received [1] - 22:2 recent [1] - 32:23 Recess [1] - 30:23 record [6] - 6:2, 8:6, 16:12, 16:23, 17:5, 34:19 recorded [7] - 3:10, 35:13, 36:10, 36:24, 39:20, 40:23, 41:9 recorder [4] - 35:15, 35:16, 35:17, 35:18 recordings [9] - 34:23, 35:8, 35:21, 36:6, 36:11, 42:8, 42:12, 42:22, 42:25 reduce [1] - 48:25 reducing [1] - 48:15 refer [1] - 46:12 reference [2] - 36:9, 50:6 referenced [2] - 6:1, 6:14 referring [1] - 35:7 regard [6] - 11:3, 11:8, 12:2, 21:18, 40:11, 40:22 regarding [4] - 21:13, 37:25, 38:3, 39:4 regulations [2] - 13:20, 13:23 Reifler [1] - 48:11 rejected [1] - 48:12 related [2] - 29:2, 34:19 released [1] - 8:2 releases [1] - 8:24 rely [2] - 43:3, 43:23 relying [3] - 11:15, 12:4, 43:5 remaining [1] - 21:1 remains [1] - 16:5 remark [2] - 9:16, 15:8 remember [2] - 8:5, 46:24 remiss [1] - 15:9 repaid [1] - 10:20 report [2] - 7:13, 12:23 reporter [1] - 22:3 Reporter [1] - 3:7 reports [1] - 6:20 represent [2] - 17:17, 32:20 representation [1] - 47:12 representative [1] - 15:6 represented [2] - 6:23, 47:3 representing [2] - 19:4, 32:10 represents [1] - 7:16 Request [1] - 4:9 request [3] - 7:3, 7:9, 18:5 required [4] - 10:18, 13:11, 34:2, 45:5 requires [1] - 13:2 RESNICK [6] - 1:25, 5:25, 32:5, 32:9, 32:16, 32:21 Resnick [1] - 5:25 resolve [1] - 49:9 respect [6] - 8:17, 10:14, 15:3, 32:12, 48:11, 50:1 respectfully [2] - 42:1, 43:4 response [1] - 38:15 restitutee [1] - 47:7</p>	<p>restitution [56] - 3:22, 4:3, 7:13, 7:15, 8:7, 8:11, 8:12, 8:24, 10:11, 10:13, 10:19, 10:20, 10:24, 11:3, 11:11, 12:21, 14:7, 14:13, 14:14, 14:15, 14:20, 15:1, 16:14, 16:18, 17:5, 17:9, 17:22, 18:17, 18:25, 19:1, 19:14, 19:19, 19:20, 19:23, 20:1, 20:7, 20:16, 29:2, 29:24, 30:11, 30:17, 32:24, 38:11, 38:19, 38:21, 38:23, 39:2, 39:6, 45:23, 46:14, 46:22, 47:13, 47:15, 47:25, 50:2, 50:7 Restitution [2] - 17:19, 44:11 restitution. [1] - 10:1 result [1] - 15:15 retain [2] - 47:4, 47:5 reversals [1] - 13:6 reviewed [1] - 17:1 revised [1] - 21:7 RH-1 [1] - 31:2 Richard [6] - 4:17, 7:23, 9:25, 17:15, 18:17, 31:22 rights [1] - 40:19 Robert [3] - 5:3, 25:14, 26:19 RON [1] - 3:5 Ron [2] - 7:21, 17:7 RUBENSTEIN [4] - 3:5, 7:21, 17:7, 17:13 Rubenstein [2] - 7:21, 17:7 Ruggerio [2] - 8:17, 8:19 Ruggiero [6] - 1:20, 5:2, 7:17, 9:12, 9:18, 18:17 rule [5] - 11:13, 14:21, 38:20, 41:9, 44:20 rules [1] - 44:4 ruling [1] - 48:7 running [1] - 34:25</p>	<p>second [3] - 18:18, 19:2, 47:2 see [8] - 3:15, 8:21, 11:15, 29:16, 44:23, 49:9, 49:20, 51:2 seek [2] - 10:1, 44:16 seeking [21] - 8:7, 10:3, 10:11, 11:3, 17:22, 18:25, 19:14, 19:19, 21:4, 25:4, 25:15, 25:22, 26:3, 26:7, 26:16, 27:10, 29:2, 30:17, 32:24, 38:21, 38:23 seem [1] - 13:25 SENIOR [1] - 1:12 sensible [1] - 38:20 sent [1] - 21:21 sentence [17] - 8:7, 8:13, 9:8, 11:10, 11:11, 12:19, 12:20, 14:3, 14:13, 14:20, 16:15, 16:19, 17:16, 19:24, 19:25, 20:1, 30:11 sentenced [13] - 7:12, 7:14, 8:10, 10:5, 10:9, 11:25, 17:4, 17:8, 17:16, 20:10, 20:11, 20:14, 29:23 sentencing [11] - 11:2, 12:6, 12:10, 12:11, 13:2, 15:17, 17:1, 29:24, 30:12, 48:19, 50:2 sentencings [2] - 13:4, 13:6 set [1] - 12:8 SETH [1] - 2:1 settle [4] - 47:6, 47:8, 49:3, 49:12 settlement [3] - 48:14, 49:20, 50:9 settling [1] - 47:1 seven [2] - 33:12, 33:13 several [2] - 20:8, 46:6 Several [1] - 21:22 severally [2] - 25:16, 46:16 Shall [1] - 29:10 shall [2] - 12:7, 12:8 Shalley [1] - 5:18 SHALLEY [2] - 2:13, 5:18 SHARGEL [15] - 1:23, 5:11, 21:18, 26:14, 40:25, 41:5, 41:17, 41:22, 41:25, 42:16, 43:3, 44:2, 44:21, 46:9, 49:2 Shargel [2] - 5:11, 5:14 SHARGEELL [6] - 29:8, 38:6, 38:13, 39:12, 40:12 shirts [1] - 13:21 shop [1] - 34:4 silence [1] - 9:9 similar [1] - 17:15 simply [1] - 32:11 single [2] - 25:16, 27:10 sitting [1] - 46:5 six [3] - 23:4, 50:6, 50:24 six-week [2] - 50:6, 50:24 skill [1] - 15:8 skivvy [1] - 13:21 small [1] - 7:10 sorry [3] - 9:4, 9:15, 25:20 sought [1] - 26:21 sources [1] - 35:24 speaking [2] - 11:4, 49:10 specifically [1] - 8:6 spell [1] - 31:15 Spinnato [20] - 7:20, 10:4, 10:7, 10:14,</p>
<p>S</p>	<p>safe [1] - 39:19 sailing [1] - 13:19 sailors [1] - 13:21 sails [1] - 13:19 sale [2] - 23:22, 27:1 sales [3] - 22:21, 22:22, 46:23 Sarita [3] - 6:3, 7:25, 16:16 SARITA [1] - 2:5 satisfied [1] - 18:4 scandal [2] - 16:5 scheduling [1] - 8:10 Schein [1] - 32:10 SCHEIN [1] - 2:11 scheme [1] - 15:15 Schiavone [2] - 24:8, 28:20 Scibelli [3] - 1:23, 26:2, 26:10 Sclafani [2] - 2:24, 27:9 Scopo [3] - 2:3, 2:23, 25:12 Scotto [3] - 2:1, 32:22, 32:24 Scotto's [1] - 4:3 seated [1] - 31:14 Second [1] - 13:6</p>	<p>shirts [1] - 13:21 shop [1] - 34:4 silence [1] - 9:9 similar [1] - 17:15 simply [1] - 32:11 single [2] - 25:16, 27:10 sitting [1] - 46:5 six [3] - 23:4, 50:6, 50:24 six-week [2] - 50:6, 50:24 skill [1] - 15:8 skivvy [1] - 13:21 small [1] - 7:10 sorry [3] - 9:4, 9:15, 25:20 sought [1] - 26:21 sources [1] - 35:24 speaking [2] - 11:4, 49:10 specifically [1] - 8:6 spell [1] - 31:15 Spinnato [20] - 7:20, 10:4, 10:7, 10:14,</p>

<p>10:16, 10:17, 11:3, 11:8, 11:24, 12:23, 18:13, 18:21, 19:16, 19:20, 19:22, 20:8, 20:9, 20:13, 37:15, 40:3</p> <p>Spinnato's [1] - 11:2</p> <p>spirit [1] - 47:13</p> <p>stand [3] - 21:17, 31:9, 50:19</p> <p>start [2] - 3:20, 50:23</p> <p>started [1] - 35:4</p> <p>starting [1] - 51:2</p> <p>State [2] - 31:15, 31:18</p> <p>statement [3] - 20:13, 41:2, 41:13</p> <p>statements [7] - 40:16, 41:11, 41:14, 42:3, 42:4, 44:17</p> <p>Staten [10] - 22:19, 22:21, 22:22, 23:5, 23:11, 23:20, 23:22, 26:15, 27:1, 33:24</p> <p>STATES [3] - 1:1, 1:4, 1:12</p> <p>States [6] - 1:7, 1:16, 1:17, 13:18, 48:21</p> <p>statute [6] - 8:2, 11:11, 11:15, 12:15, 48:5, 48:9</p> <p>stay [1] - 51:1</p> <p>stemming [1] - 10:15</p> <p>stenography [1] - 3:10</p> <p>step [1] - 29:8</p> <p>still [5] - 11:23, 14:7, 38:13, 47:14, 50:3</p> <p>stipulated [1] - 45:25</p> <p>stipulation [2] - 47:20, 50:11</p> <p>stood [1] - 50:21</p> <p>straightened [1] - 8:22</p> <p>studied [1] - 43:6</p> <p>subcategories [1] - 21:5</p> <p>subdivision [2] - 12:3, 12:16</p> <p>subject [2] - 36:17, 39:3</p> <p>submission [5] - 10:23, 11:1, 11:6, 11:25, 32:1</p> <p>submissions [4] - 6:12, 18:19, 32:23, 43:11</p> <p>Submit [3] - 17:11, 17:24</p> <p>submit [9] - 14:23, 14:25, 16:8, 18:2, 18:9, 42:1, 43:4, 50:1, 50:11</p> <p>submitted [13] - 3:22, 5:4, 5:6, 5:19, 5:22, 6:3, 6:13, 6:16, 11:5, 15:15, 21:6, 43:10, 48:10</p> <p>subpoenaed [1] - 40:18</p> <p>subpoenaing [1] - 46:7</p> <p>subpoenas [1] - 40:19</p> <p>subsequently [2] - 11:21, 12:17</p> <p>substantial [2] - 48:17, 48:20</p> <p>suggest [3] - 14:16, 20:15, 50:25</p> <p>suggestion [1] - 44:1</p> <p>Sulzer [1] - 3:7</p> <p>summary [3] - 21:13, 35:23, 38:2</p> <p>support [1] - 14:24</p> <p>supposed [1] - 35:21</p> <p>Supreme [1] - 39:5</p> <p>Surely [1] - 17:13</p> <p>SUSAN [1] - 2:7</p> <p>Swear [1] - 31:8</p> <p>switch [2] - 29:20, 35:16</p>	<p style="text-align: center;">T</p> <p>tapes [10] - 41:12, 41:23, 42:2, 43:6, 43:24, 44:17, 44:22, 44:24, 45:3, 45:10</p> <p>team [4] - 35:12, 35:19, 35:23, 36:20</p> <p>Teamsters [4] - 19:11, 19:12, 20:21, 34:1</p> <p>ten [1] - 12:6</p> <p>tend [1] - 38:21</p> <p>tentative [1] - 48:6</p> <p>terms [2] - 12:14, 35:21</p> <p>testified [1] - 21:12</p> <p>testify [3] - 21:13, 40:23, 42:2</p> <p>testimonial [2] - 38:8, 40:16</p> <p>testimony [7] - 21:24, 22:4, 38:17, 40:22, 43:16, 45:6, 46:7</p> <p>THE [6] - 1:12, 31:9, 31:13, 31:14, 31:16, 31:19</p> <p>The court [205] - 3:14, 3:23, 5:8, 5:9, 5:13, 5:17, 5:20, 6:1, 6:6, 6:15, 6:18, 6:19, 6:25, 7:2, 7:9, 7:14, 8:1, 8:11, 8:15, 8:21, 9:5, 9:16, 9:20, 9:22, 9:24, 10:2, 10:6, 10:8, 10:13, 10:23, 11:6, 11:10, 11:18, 11:19, 12:3, 12:7, 12:8, 12:11, 12:14, 12:20, 13:1, 14:1, 14:3, 14:10, 14:17, 14:23, 15:1, 15:3, 15:15, 16:1, 16:10, 16:20, 16:22, 17:3, 17:11, 17:17, 17:19, 17:24, 18:4, 18:7, 18:10, 18:11, 18:16, 18:18, 18:23, 19:7, 19:9, 19:12, 19:14, 19:17, 19:22, 19:25, 20:4, 20:9, 20:13, 20:18, 20:20, 20:25, 21:4, 21:9, 21:14, 21:16, 22:5, 22:9, 22:11, 22:13, 22:16, 22:18, 22:20, 22:22, 22:24, 23:1, 23:3, 23:5, 23:9, 23:11, 23:14, 23:17, 23:20, 23:22, 23:25, 24:2, 24:5, 24:7, 25:1, 25:3, 25:8, 25:11, 25:13, 25:15, 25:19, 25:21, 25:25, 26:3, 26:7, 26:9, 26:11, 26:13, 26:15, 26:22, 26:24, 27:1, 27:3, 27:5, 27:7, 27:10, 27:12, 27:16, 27:19, 27:22, 27:25, 28:4, 28:6, 28:9, 28:12, 28:18, 28:22, 29:1, 29:4, 29:10, 29:13, 29:16, 29:25, 30:5, 30:8, 30:17, 30:21, 31:8, 31:17, 31:23, 32:3, 32:7, 32:14, 32:19, 32:20, 33:3, 33:5, 38:15, 38:20, 39:5, 39:9, 39:14, 41:4, 41:8, 41:21, 41:24, 42:7, 42:11, 42:13, 42:17, 42:20, 42:25, 43:17, 43:21, 43:24, 44:4, 44:8, 44:18, 44:20, 44:23, 45:2, 45:9, 45:13, 45:22, 46:3, 46:5, 46:11, 47:1, 47:18, 47:22, 48:2, 48:3, 48:6, 48:12, 48:23, 49:12, 49:19, 50:1, 50:4, 50:11, 50:14, 50:20, 51:3</p> <p>theories [1] - 46:14</p> <p>Therefore [1] - 50:14</p> <p>therefore [1] - 47:4</p> <p>third [2] - 9:24, 19:3</p> <p>Thomas [6] - 26:17, 27:2, 27:3, 37:21, 37:22, 40:3</p> <p>thorough [1] - 13:16</p> <p>thoroughly [1] - 17:1</p> <p>three [3] - 10:2, 26:5, 45:7</p>	<p>Three [1] - 27:13</p> <p>today [7] - 6:23, 21:12, 22:3, 29:25, 32:1, 32:16, 45:8</p> <p>together [3] - 16:24, 45:15, 50:22</p> <p>tomorrow [1] - 14:24</p> <p>top [1] - 14:23</p> <p>total [8] - 26:21, 27:15, 27:21, 28:3, 28:11, 28:16, 28:24, 29:5</p> <p>Total [1] - 26:24</p> <p>touched [1] - 29:14</p> <p>town [1] - 50:17</p> <p>tragedy [1] - 13:24</p> <p>transcribed [1] - 42:19</p> <p>transcript [2] - 3:10, 17:2</p> <p>TRANSCRIPT [1] - 1:11</p> <p>transcription [1] - 3:10</p> <p>transcripts [2] - 16:23, 42:13</p> <p>treasury [1] - 48:24</p> <p>trial [6] - 38:17, 46:12, 49:4, 49:5, 50:6, 51:4</p> <p>tricky [1] - 13:1</p> <p>truck [1] - 37:10</p> <p>Trucking [4] - 22:10, 23:7, 23:17, 37:10</p> <p>trucking [14] - 22:11, 23:9, 25:3, 25:6, 33:24, 34:4, 35:3, 37:7, 37:9, 37:11, 37:17, 38:3, 38:4, 40:5</p> <p>true [1] - 15:17</p> <p>truth [3] - 31:10, 31:11</p> <p>try [2] - 47:9, 50:6</p> <p>trying [2] - 43:25, 44:25</p> <p>Two [3] - 6:10, 23:11, 23:13</p> <p>two [11] - 5:19, 6:11, 13:8, 22:17, 28:20, 29:9, 35:2, 46:5, 49:7, 49:23, 50:8</p> <p>two-week [2] - 49:23, 50:8</p> <p style="text-align: center;">U</p> <p>Under [3] - 13:9, 34:1, 47:24</p> <p>under [18] - 8:2, 11:11, 12:14, 23:18, 26:3, 31:2, 31:11, 37:17, 37:20, 38:4, 38:6, 38:24, 42:3, 43:11, 47:15, 48:5, 48:7, 48:9</p> <p>Understood [1] - 20:12</p> <p>unfortunately [1] - 15:22</p> <p>union [15] - 10:16, 10:20, 15:4, 15:10, 15:14, 15:19, 15:21, 16:4, 19:3, 19:4, 19:9, 33:15, 34:2, 34:5, 37:10</p> <p>union's [1] - 15:10</p> <p>unions [1] - 16:5</p> <p>UNITED [3] - 1:1, 1:4, 1:12</p> <p>United [6] - 1:7, 1:16, 1:17, 13:18, 48:21</p> <p>up [8] - 3:23, 14:13, 21:25, 31:17, 36:3, 44:5, 50:19, 50:21</p> <p>USC [1] - 11:17</p> <p>useful [1] - 47:6</p>
--	---	--

<p style="text-align: center;">V</p> <p>Vallaro [1] - 48:4 variety [1] - 22:4 various [4] - 35:8, 36:6, 36:15, 36:16 verified [1] - 36:20 verify [1] - 36:1 victim [8] - 11:22, 12:16, 43:12, 47:15, 47:24, 48:4, 48:8, 48:9 Victim [1] - 43:12 victim's [4] - 11:21, 12:5, 12:9, 12:12 victims [2] - 46:3, 48:22 victims' [1] - 47:14 view [5] - 8:1, 8:23, 10:8, 16:17, 46:18 View [6] - 22:15, 22:16, 23:13, 23:14, 23:18, 25:22 views [1] - 6:20 Vincent [25] - 4:12, 4:18, 4:20, 4:22, 5:18, 6:9, 7:24, 16:25, 17:4, 17:14, 17:15, 17:17, 18:7, 18:20, 25:10, 25:24, 26:18, 26:20, 26:22, 27:14, 27:20, 28:2, 28:10, 32:1 violation [1] - 41:6 virtually [1] - 49:4 Vollaro [30] - 11:4, 20:24, 20:25, 21:5, 21:8, 22:6, 33:19, 33:23, 34:7, 34:11, 35:14, 35:20, 36:2, 36:4, 36:7, 36:22, 38:7, 38:18, 39:2, 39:4, 40:20, 41:13, 42:2, 43:9, 43:18, 44:17, 45:23, 46:8, 47:12 Vollaro's [5] - 36:13, 37:8, 37:24, 39:21, 40:18 voluminous [1] - 21:24</p> <p style="text-align: center;">W</p> <p>wages [3] - 10:16, 34:2, 34:5 Wait [4] - 25:8, 27:19, 27:25, 28:18 wait [1] - 16:21 waived [4] - 30:1, 30:3, 30:7, 30:16 Waiver [4] - 4:3, 4:11, 4:12, 4:18 waiver [5] - 6:6, 9:9, 11:13, 11:14, 14:17 walked [1] - 22:2 wants [1] - 29:13 Washington [1] - 38:7 WASSERMAN [9] - 2:19, 7:24, 17:14, 17:18, 17:20, 18:2, 18:6, 31:24, 32:4 Wasserman [2] - 7:24, 17:14 wear [1] - 13:21 week [14] - 16:7, 16:10, 16:23, 18:19, 18:24, 20:18, 32:2, 35:14, 49:23, 50:3, 50:6, 50:8, 50:18, 50:24 weeks [6] - 43:16, 45:6, 45:17, 46:6, 47:4, 49:7 WEINSTEIN [1] - 1:12 well-known [1] - 20:22 WHITE [1] - 3:4 whole [3] - 23:14, 31:11, 45:7</p>	<p>William [2] - 4:3, 32:22 wiretaps [1] - 36:3 wish [2] - 32:11, 32:19 withdraw [1] - 39:14 withdrew [1] - 6:25 witness [10] - 21:16, 29:7, 31:8, 31:21, 33:7, 41:9, 42:5, 43:23, 45:2, 46:8 WITNESS [3] - 31:13, 31:16, 31:19 Witness [1] - 43:19 witnesses [1] - 36:1 words [2] - 41:1 writing [1] - 17:11 written [2] - 5:9, 18:19</p> <p style="text-align: center;">Y</p> <p>year [1] - 6:13 years [6] - 13:5, 13:13, 33:12, 33:13, 33:17, 45:7 yesterday [2] - 18:2, 21:12 YORK [1] - 1:1 York [3] - 1:7, 1:18, 3:8</p> <p style="text-align: center;">Z</p> <p>Zagari [6] - 3:6, 4:14, 7:21, 17:8, 18:20, 27:20</p>
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